ORIGINAL

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY KNG DEPUTY

Attorneys for Plaintiffs
GREAT AMERICAN INSURANCE COMPANY,
GREAT AMERICAN INSURANCE COMPANY OF NEW YORK,
formerly known as **AMERICAN NATIONAL FIRE INSURANCE COMPANY**

UNITED STATES DISTRICT COURT FOR

THE SOUTHERN DISTRICT OF CALIFORNIA

GREAT AMERICAN INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY

Plaintiffs,

v.

MARTINA ENTERPRISES U S INC., a Washington corporation doing business as MARTINA MECHANICAL ENTERPRISES (US) INC.; HERMAN KOECHL, an individual; CHRISTINA KOECHL, an individual; and DOES 1-100,

Defendants.

CASE NO.: '08 CV 0314 L JMA

COMPLAINT FOR:

1. **Negligence**
2. **Breach of Contract**
3. **Breach of Express Warranty**
4. **Breach of Implied Warranty**
5. **Express Indemnity**
6. **Implied Indemnity**
7. **Equitable Indemnity**
8. **Comparative Indemnity**
9. **Alter Ego**
10. **Declaratory Relief**

JURY TRIAL REQUESTED

Plaintiffs GREAT AMERICAN INSURANCE COMPANY and GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY (hereinafter collectively referred to as "Plaintiffs" or "GREAT AMERICAN") hereby allege as follows:

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DOC: 119835

THE PARTIES

1. Plaintiff GREAT AMERICAN INSURANCE COMPANY is, and at all times mentioned herein was, an Ohio-based insurance company with its principal place of business in Ohio.

2. Plaintiff GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY is, and at all times mentioned herein was, a New York-based insurance company with its principal place of business in New York.

3. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. is a Washington corporation with its principal place of business in Washington State and doing business in the State of California as MARTINA MECHANICAL ENTERPRISES (US) INC.

4. Plaintiffs are informed and believe and thereon allege that Defendant HERMAN KOECHL is an individual who is a citizen of, and resides in, the State of California.

5. Plaintiffs are informed and believe and thereon allege that Defendant CHRISTINA KOECHL is an individual who is a citizen of, and resides in, the State of California.

6. Plaintiffs are informed and believe and thereon allege, that at all times herein mentioned, that each Defendant was authorized to do business in California and was the agent, officer, partner, alter ego, joint venturer, and/or the employee of each of the remaining Defendants and was at all times herein mentioned, acting within the course and scope of such agency, authority and/or employment.

7. The true names or capacities of Defendants named herein as DOES 1 through 100, inclusive, are unknown to Plaintiffs at this time. The names, capacities and relationships of DOES 1 through 100, inclusive, will be alleged by amendment to this Complaint when they have been ascertained.

8. Plaintiffs are informed and believe and thereon allege that each of the Defendants, including DOES 1 through 100, inclusive, dispute Plaintiffs' contentions herein and are in some manner legally responsible for the acts and omissions alleged herein, whether as corporations, other forms of business entities and/or as alter egos for same, and/or actually and proximately caused and

contributed to the various losses and damages referred to herein.

9. The allegations of this Complaint stated on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

JURISDICTION AND VENUE

10. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because Plaintiffs and Defendants are citizens of different states and although Plaintiffs damages have not yet been fully ascertained, upon information and belief, their damages and the amount in controversy exceed $75,000.00 exclusive of interest and costs.

11. This action arises from a construction defect litigation involving a 321 unit condominium project known as CityFront Terrace, located in San Diego, California.

12. Venue is proper in this judicial district under 28 U.S.C. §1391(b).

MATERIAL ALLEGATIONS

13. On or about December 22, 2003, CityFront Terrace Homeowners Association ("Homeowners Association") filed a Complaint for Damages for Strict Liability, Breach of Implied Warranty, and Negligence, among other causes of action, case number GIC 823195, in the San Diego Superior Court, ("Underlying Action") alleging that the entities involved in the design, development and construction of the CityFront Terrace project ("Project") were liable for property damages in excess of $90 million for alleged deficiencies (including defective plumbing systems) at the Project. The Complaint was amended from time to time, with the final operative Complaint identified as the Seventh Amended Complaint filed on or about February 22, 2006.

14. Marina Village Associates, L.P., and related entities, designed, developed and constructed the Project. In order to construct the Project, Marina Village Associates, L.P., entered into a contract with TKCC, Inc, dba Koll Construction ("Koll") for the construction of the entire Project ("the Prime Contract"), including all plumbing systems. A copy of the Prime Contract is attached hereto as Exhibit "A." In turn, Koll entered into a subcontract with Defendant MARTINA ENTERPRISES (US) INC., and DOES 1 through 100, inclusive (collectively referred to as "Defendants"), and each of them, to furnish all labor, materials and services necessary for the installation of all plumbing systems at the Project (the "Subcontract"). A copy of the Subcontract is

attached hereto as Exhibit "B." These services and materials contributed to the construction deficiencies at the Project, as more fully described below.

15. At the time of the construction of the Project and thereafter, there were in effect insurance policies issued by Plaintiffs Great American Insurance Company and Great American Insurance Company of New York (formerly known as American National Fire Insurance Company) to the various developing entities, including, but not limited to, Marina Village Associates, L.P., Urban Partners, L.P., Urban West Associates, Kriozere Corporation, Michael Kriozere, The Gimbel Corporation, Kabuto International Corporation, Gentium Realty Investments, and Royal Crest Investments (hereinafter "Insureds") providing coverage for the damage to the Project insuring against identified losses and damages.

16. After more than three years of litigation and numerous mediations and pursuant to the terms of the insurance policies, on or about April 4, 2007, Plaintiffs paid $2,879,831.27 to resolve all claims by the Homeowners Association against the Insureds in the Underlying Action arising out of the work performed by Defendants.

17. To the extent of payments made by Plaintiffs on behalf of its Insureds, Plaintiffs are legally and equitably subrogated to the rights and interests of its Insureds and are therefore entitled to institute and pursue legal remedies against the Defendants to recover any and all amounts paid by Plaintiffs under the policies.

COUNT ONE

(Negligence as to all Defendants)

18. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 17, inclusive, as though they are fully set forth herein.

19. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, negligently, carelessly and wrongfully failed to use reasonable care in furnishing all labor, materials and services necessary for the installation of the plumbing system at the Project.

20. Plaintiffs are further informed and believe and thereon allege that Defendants, and each of them, negligently, carelessly and wrongfully failed to exercise reasonable care and diligence to avoid loss and to minimize and mitigate damages in the installation of the plumbing systems at the

project, which could have been prevented by reasonable efforts on the part of said Defendants, or by expenditures which should have been made in the exercise of due care.

21. As a proximate and direct result of Defendants' actions, the Project suffered extensive physical damage to, and loss of use of, numerous building components other than the plumbing system, as well as the plumbing system itself, at various times after construction of the Project, which was completed on January 7, 1994. As a result, Plaintiffs were required to pay $2,879,831.27 to resolve all claims by the Homeowners Association against the Insureds in the Underlying Action.

COUNT TWO

(Breach of Contract as to all Defendants)

22. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 21, inclusive, as though they are fully set forth herein.

23. The Insureds were the foreseeable and intended third party beneficiaries of the Subcontract between Defendants and Koll. The Subcontract provides in paragraph 16 of Attachment B to the Subcontract that all work within the Subcontract shall be completed to the satisfaction of the Insureds, identified as "Owner." In addition, the Subcontract provides at paragraph 20 of Attachment B to the Subcontract that all references within the Project specifications to "Contractor" shall be interpreted as "Subcontractor" and shall be included as Subcontractor's work. Paragraph 1(e) of the General Terms of the Subcontract requires Subcontractor to defend and indemnify the Insureds, identified as "Owner." Paragraph 21 of the General Terms of the Subcontract provides a guarantee to the Insureds, identified as "Owner" for the plumbing systems. The Insureds fully performed all conditions, covenants, and promises in accordance with the terms and conditions of the Subcontract.

24. According to the terms of the Subcontract, Defendants, and each of them, agreed to provide and install the plumbing system at the Project in a reasonable and workmanlike manner, in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project identified in the Prime Contract.

25. Plaintiffs are informed and believe and thereon allege that Defendants breached the Subcontract by failing to construct the plumbing systems in a reasonable and workmanlike manner,

in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project identified in the Prime Contract.

26. As a proximate and direct result of Defendants' actions, the Project suffered extensive physical damage to, and loss of use of, numerous other building components other than the plumbing system, as well as the plumbing system itself, at various times after construction was completed. As a result, Plaintiffs were required to pay $2,879,831.27 to resolve all claims by the Homeowners Association against Plaintiffs' Insureds in the Underlying Action arising out of the work performed by Defendants.

27. Pursuant to the terms of the Subcontract, Plaintiffs are entitled to attorneys' fees and costs.

COUNT THREE

(Breach of Express Warranty As to All Defendants)

28. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 27 as though fully set forth herein.

29. The Subcontract provides further that the Insureds, referred to as "Owner," shall be entitled to the protections and benefits of the express warranty set forth in the following provision of the subcontract:

> GUARANTEE. Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee form, will guarantee all materials and workmanship and agree to replace at his sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, losses or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, Subcontractor shall be bound as specified. All guarantees will inure to the benefit of the Contractor, Owner, their successors or assigns excluding equipment warranties. [*General Terms, paragraph 21*]

The Prime Contract, which is part of the Contract Documents, does not contain any time limitations on the warranties to the Insureds.

30. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, breached said warranties by failing to construct the plumbing system in a reasonable and workmanlike manner, in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project as set forth in the Prime Contract.

31. As a proximate result of the breach of the express warranties by Defendants, and each of them, Plaintiffs have suffered damages in a sum equal to $2,879,831.27 paid by Plaintiffs to settle the Underlying Action by the Homeowners Association.

32. The Insureds previously provided notice to each Defendant, and the insurance carriers of Martina that the Insureds were aware of at that time, of the claims and defect allegations made by the Homeowners Association. This Complaint will serve as further notice of such conditions. Plaintiffs are informed and believe and thereon allege that Defendants, and the insurers, declined to acknowledge their responsibilities to repair the defects and damages as referenced above.

COUNT FOUR

(Breach of Implied Warranty as to All Defendants)

33. Plaintiffs reallege paragraphs 1 through 32 of the Complaint above and incorporate them herein by this reference as though fully set forth hereat.

34. Plaintiffs are informed and believe and thereon allege that each of the Defendants herein entered into the Subcontract with Koll expressly for the benefit of the Insureds, and this Subcontract provided, inter alia, that the Defendants would furnish all labor and materials and services necessary, would perform their work in a good and workmanlike manner, and that Defendants were committed to quality throughout all phases of their work.

35. Plaintiffs are informed and believes and thereon allege that each of the Defendants impliedly warranted that the various products, services, items, structures and systems supplied, manufactured, assembled, designed and/or constructed by each of them, would be reasonably fit and merchantable for all aspects.

36. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, breached said warranties by failing to construct the plumbing system in a reasonable and

workmanlike manner, in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project as set forth in the Prime Contract.

37. As a proximate result of the breach of the implied warranties by Defendants, and each of them, Plaintiffs have suffered damages in a sum equal to $2,879,831.27 paid by Plaintiffs to settle the Underlying Action by the Homeowners Association.

38. The Insureds previously provided notice to each Defendant, and the insurance carriers of Martina that the Insureds were aware of at that time, of the claims and defect allegations made by the Homeowners Association. This Complaint will serve as further notice of such conditions. Plaintiffs are informed and believes and thereon allege that Defendants, and the insurers, declined to acknowledge their responsibilities to repair the defects and damages as referenced above.

COUNT FIVE

(Express Indemnity As to All Defendants)

39. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 38 as though fully set forth herein.

40. The Subcontract provides further that the Insureds, referred to as "Owners," shall be entitled to the protections and benefits of the express indemnification agreement set forth in the following provision of the Subcontract:

> Hold Harmless Agreement: Subcontractor shall assume liability and indemnify the Contractor and Owner, (from and against any liability and loss, cost, damages, expenses, including attorney fees, on account of claims for personal injury, including death, sustained by any person or persons whomsoever, including employees of Subcontractor, and for injury to or destruction of property of the person or organization, including loss of use thereof, arising out of the performance of the work under this Subcontract, excepting only such matters caused solely and exclusively by the active negligence or the willful misconduct of the Contractor. [*General Terms, 1(e)*]

41. Plaintiffs are informed and believes and thereon allege that, some or all of the damages suffered by the Homeowners Association were caused by, or arose out of, the performance of Defendants' obligations pursuant to the Subcontract.

42. Plaintiffs are informed and believe that the Insureds tendered the indemnity of the

Underlying Action by the Homeowners Association to Defendants, and the insurance carriers of Martina that the Insureds were aware of at that time, and Defendants and the insurers have unreasonably and unjustifiably denied, failed, refused and neglected to indemnify the Insureds and thereby breached the indemnity agreement in the Subcontract.

43. Plaintiffs are informed and believe and thereon allege that, it is entitled to indemnity from Defendants and the insurers based on the terms of the express indemnity agreement set forth above, in a sum equal to $2,879,831.27 paid by Plaintiff to settle the Underlying Action by the Homeowners Association.

COUNT SIX

(Implied Contractual Indemnity As to All Defendants)

44. Plaintiffs refer to and incorporate herein by reference Paragraphs 1 through 43 as though fully set forth herein.

45. Plaintiffs are informed and believe and thereon allege that Defendants entered into the Subcontract with Koll for the express benefit of the Insureds and the Subcontract provided that Defendants, and each of them, would be responsible for the consequences of their own work and not impose such responsibility on the Insureds.

46. Plaintiffs are entitled to implied contractual indemnity from Defendants, and each of them, pursuant to, inter alia, Code of Civil Procedure Section 1021.6, for injuries and damages sustained by Plaintiffs for the sums paid by way of settlement in the Underlying Action.

47. Plaintiffs have suffered damages in a sum equal to $2,879,831.27 paid by Plaintiffs to settle the Underlying Action by the Homeowners Association.

COUNT SEVEN

(Equitable Indemnity As to All Defendants)

48. Plaintiffs refer to and incorporate, herein, all of the allegations contained in Paragraphs 1 through 47 as though fully herein.

49. Plaintiffs deny that the Insureds either caused or contributed to the losses suffered by the Homeowners Association. Plaintiffs are informed and believe and thereon alleges that the conduct of Defendants, and each of them, proximately caused and contributed to the losses

suffered by the Homeowners Association and paid by Plaintiffs.

50. Plaintiffs are informed and believe and thereon allege that the losses suffered by the Homeowners Association were substantially caused by the breach of contract, negligence or other wrongful conduct of Defendants, and each of them, thereby entitling Plaintiffs to have the quantum of legally responsible conduct of Defendants, and each of them, determined by this Court.

51. Plaintiffs are informed and believe and thereon allege that Plaintiffs are entitled to contribution from, and apportionment of, the liability of Defendants, and each of them, to the extent that the legally responsible conduct of said Defendants exceeds that of the Insureds.

52. Plaintiffs are informed and believe and thereon allege that the legally responsible conduct of Defendants and each of them contributed in an undetermined percentage to the losses sustained by the Homeowners Association. Plaintiffs are informed and believe and thereon allege that they are entitled to contribution from and an apportionment of liability of Defendants, and each of them, to the extent that the legally responsible conduct of said Defendants proximately caused and contributed to the losses sustained by the Homeowners Association, so that the liability is ultimately assessed among the parties in direct proportion to the percentage of fault attributable to the conduct of Defendants, and each of them. Plaintiffs allege that the amount of indemnification and contribution due from Defendants is not less than $2,879,831.27, the amount Plaintiffs paid to settle the Underlying Action by the Homeowners Association.

COUNT EIGHT

(Comparative Indemnity As to All Defendants)

53. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 52 as though fully set forth herein.

54. Plaintiffs hereby deny that the Insureds either caused or contributed to the damages sustained by the Homeowners Association. Plaintiffs are further informed and believe and thereon allege, that the fault, carelessness, negligence, breach of contract, and other wrongful conduct, in whole or in part, of all Defendants, and each of them, proximately caused and contributed to the events, incidents, and damages suffered by the Homeowners Association.

55. Plaintiffs are informed and believe and thereon allege that the Insureds' contribution

to the damages suffered by the Homeowners Association is less than 100% of the total of all legally cognizable conduct proximately causing the loss, injury, damage and detriment, hence liability must be assessed against all Defendants, in direct proportion to the percentage of legally cognizable conduct attributable to each of the Defendants for the alleged loss, injury, damage and detriment.

56. Based on the foregoing, Plaintiffs are informed and believe and thereon allege that, all Defendants, and each of them, should be required to indemnify Plaintiffs for all, or a portion of, the $2,879,831.27 in damages paid by Plaintiffs to the Homeowners Association.

COUNT NINE

(Alter-Ego as to all Defendants)

57. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 56, inclusive, as though fully set forth hereat.

58. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. and the Insureds entered into written a contractual agreement, the same as or similar to Exhibit "B."

59. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. was a corporation when it entered into a written contract with the Insureds.

60. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. was managed and/or dominated and/or controlled by Defendants HERMAN KOECHL either alone or in conjunction with CHRISTINA KOECHL, and that Defendant MARTINA ENTERPRISES (US) INC. was their "alter ego."

61. Plaintiffs are informed and believe and thereon allege that MARTINA ENTERPRISES (US) INC. did not follow corporate formalities and was a sham corporation.

62. Plaintiffs are informed and believe and thereon allege HERMAN KOECHL and CHRISTINA KOECHL, as the Responsible Managing Officers, and/or Directors, and/or Officers, made the construction, design, and management decisions and representations and ratified the decisions of other construction entities that resulted in the damages as alleged, thus making them personally liable, along with MARTINA ENTERPRISES (US) INC.

63. A dispute has arisen and an actual controversy now exists between Plaintiffs, MARTINA ENTERPRISES (US) INC., HERMAN KOECHL, CHRISTINA KOECHL, and each of them, in that Plaintiffs contend that recognition of the privilege of separate existence would promote injustice because HERMAN KOECHL and CHRISTINA KOECHL, are the alter egos, principles, agents or persons with apparent authority to bind MARTINA ENTERPRISES (US) INC. to a written contract.

64. As a direct and proximate result, Plaintiffs have suffered damages in a sum equal to $2,879,831.27 paid in settlement based upon the allegations in the underlying action by the Homeowners Association arising from the Defendants' actions at the Project. On this basis, Plaintiffs are entitled to their out of pocket damages, including reasonable attorneys' fees, for any and all losses, sums, costs and expenditures attendant to this litigation proximately and legally caused by Defendants.

COUNT TEN

(Declaratory Relief - Indemnity - As to All Defendants)

65. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 64 as though fully set forth herein.

66. A dispute has arisen and an actual controversy now exists between Plaintiffs on the one hand, and Defendants, and each of them, on the other hand in that they contend that they are entitled to express indemnity, equitable indemnity, implied contractual indemnity, apportionment and/or contribution, while Defendants, and each of them, deny such obligations.

67. Plaintiffs desire a judicial determination of their respective rights and Defendants' duties in conjunction with the matters herein alleged and a judgment in Plaintiffs' favor as to any obligations by said Defendants, and each of them to Plaintiffs.

REQUEST RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For compensatory damages in the amount of $2,879,831.27;
2. For a declaration that each Defendants are responsible for any sums awarded to Plaintiffs;

3. For an immediate declaration that Defendants had a duty to indemnify the Insureds in the underlying action pursuant to the terms of the written agreement entered into by Defendants and the Insureds;

4. For a declaration of the amount for which each Defendants are obligated to indemnify Plaintiffs or to contribute;

5. For attorneys' fees pursuant to written agreement entered into by Defendants and the Insureds;

6. For interest at the allowable legal rate from the due date;

7. For costs of suit incurred herein; and,

8. For such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: February 15, 2008 **BALESTRERI, PENDLETON & POTOCKI**

BY: [signature]
THOMAS BALESTRERI
SCOTT SILBER
MATTHEW STOHL
Attorneys for Plaintiffs
GREAT AMERICAN INSURANCE COMPANY, and GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY

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EXHIBIT A

EXHIBIT "A"

THE AMERICAN INSTITUTE OF ARCHITECTS

DRAFT DATE: August 22, 1991

AIA Document A111

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is the
COST OF THE WORK PLUS A FEE
with or without a Guaranteed Maximum Price

1987 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the day of in the year of
Nineteen Hundred and Ninety-one

BETWEEN the Owner: MARINA VILLAGE ASSOCIATES
(Name and address)
12780 High Bluff Drive, Suite 200
San Diego, CA 92130
Attn: Michael Kriozere

and the Contractor: ROLL CONSTRUCTION
(Name and address)
7330 Engineer Road
San Diego, CA 92111-1464

the Project is: CITYFRONT TERRACE
(Name and address)
Market and Union Streets
San Diego, CA

the Architect is:
(Name and address)

Prime Architect
Solomon, Cordwell, Buenz & Associates, Inc.
57 West Grand Avenue, Suite 800
Chicago, IL 60610
Attn: Steven Weiss

Rehabilitation Architect
Architect, Milford Wayne Donaldson, Inc.
846 Fifth Ave., Suite 300
San Diego, CA 92101
Attn: Wayne Donaldson

The Owner and Contractor agree as set forth below.

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UP086039

Exhibit A

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ARTICLE 1
THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 16. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

EDIT See Amendment "A", Paragraph 1.2 (all references to "Amendment A" or to "EDIT" refer to Amendment A described in Paragraph 14.3 below).

ARTICLE 2
THE WORK OF THIS CONTRACT

2.1 The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Construction of the CityFront Terrace condominium project including reconstruction of the existing Citrus Soap Factory Building into condominium units complete with related site work and interior finishes, including the construction and completion of a new 13-story condominium apartment building (the existing Citrus Soap Factory Building consists of a 4-story existing building), together containing approximately 462,000 square feet, exclusive of a basement and sub-basement parking facility containing approximately 152,800 square feet. The Owner's property is bounded by Market Street, Union Street, Columbia Street and MTDB Right of Way in San Diego, California.

ARTICLE 3
RELATIONSHIP OF THE PARTIES

3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with requirements of the Contract Documents.

EDIT See Amendment "A", Paragraph 3.1.

ARTICLE 4
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

EDIT 4.1 The date of commencement is the date from which the Contract Time of Subparagraph 4.2 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. See Amendment "A", Article 4.1.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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UP086040

Exhibit A
2

4.2 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

EDIT 4.2.2

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

Refer to Supplementary General Conditions to AIA 201.

ARTICLE 5
CONTRACT SUM

5.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Contractor's Fee determined as follows:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and explain how the Contractor's Fee is to be adjusted for changes in the Work.)

5.1.1 In consideration of the performance of this Contract, the Owner agrees to pay the Contractor, as compensation for his services, the Contractor's Fee in an amount equal to three percent (3%) of the Cost of the Work as defined in Article 7 BUT will be expressly set as a lump sum by the Excavation Change Order and the Construction Change Order.

5.1.2 For changes in the Work, the Contractor's Fee shall be adjusted as follows: All Scope of Work changes will be based upon the direct cost of the Work required plus three percent (3%) markup for Contractor's Fee. The markup for Contractor's Fee will only apply if the total of all increases in Scope of Work changes have reached a total of One Million Dollars ($1,000,000.00). Similarly, if a Scope of Work change results in a direct cost credit which together with all previous Scope of Work changes have cumulatively reached a total of One Million Dollars ($1,000,000.00), the three percent (3%) Contractor's Fee associated with same will also be credited.

5.2 GUARANTEED MAXIMUM PRICE (IF APPLICABLE)

5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed Dollars ($), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

In the event the Cost of the Work as defined in Article 7 shall exceed the Guaranteed Maximum Price, as adjusted by change order, such excess shall be borne solely by the Contractor. In the event that the final Cost of the Work as defined in Article 7, plus the Contractor's Fee as set forth in Article 5, is less than the Guaranteed Maximum Price at the time of the final Certificate of Payment, twenty-five percent (25%) of the resulting difference ("Savings") will be paid to the Contractor as an additional Incentive Fee for efficient performance. Final accounting of all costs, subsequent to final payment, shall incorporate the Owner's participation of seventy-five percent (75%) of the Savings.

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5.2.2 The Guaranteed Maximum Price is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates, but only if a Guaranteed Maximum Price is inserted in Subparagraph 5.2.1. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

Exhibits to be attached to Construction Change Order or other approved Change Order.

5.2.3 The amounts agreed to for unit prices, if any, are as follows:

(State unit prices only if a Guaranteed Maximum Price is inserted in Subparagraph 5.2.1.)

Exhibits to be attached to Construction Change Order or other approved Change Order.

ARTICLE 6
CHANGES IN THE WORK

6.1 CONTRACTS WITH A GUARANTEED MAXIMUM PRICE

6.1.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of the General Conditions.

6.1.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of the General Conditions and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.1.3 In calculating adjustments to this Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 5.1 of this Agreement.

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~~6.2 CONTRACTS WITHOUT A GUARANTEED MAXIMUM PRICE~~

~~6.2.1 Increased costs for the items set forth in Article 7 which result from changes in the Work shall become part of the Cost of the Work, and the Contractor's Fee shall be adjusted as provided in Paragraph 5.1.~~

~~6.3 ALL CONTRACTS~~

~~6.3.1 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.~~

ARTICLE 7

COSTS TO BE REIMBURSED

7.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.1.1 LABOR COSTS

EDIT **7.1.1.1** Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

EDIT ~~**7.1.1.2** Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's agreement.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time.)~~

EDIT ~~**7.1.1.3** Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

EDIT **7.1.1.4** Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Clauses 7.1.1.1 through 7.1.1.3.

7.1.2 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.1.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

7.1.3.2 Costs of materials described in the preceding Clause 7.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.1.4 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.1.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

EDIT **7.1.4.3** Costs of removal of debris from the site.

EDIT **7.1.4.4** Costs of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.1.4.5 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling outside San Diego in discharge of duties connected with the Work, as approved by the Owner in advance.

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7.1.5 MISCELLANEOUS COSTS

EDIT **7.1.5.1** That portion directly attributable to this Contract of premiums for insurance and bonds.

7.1.5.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Contractor is liable.

7.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.1.5.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of the General Conditions or other provisions of the Contract Documents and which do not fall within the scope of Subparagraphs 7.2.2 through 7.2.4 below.

7.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or of a Guaranteed Maximum Price, if any, and provided that such royalties, fees and costs are not excluded by the last sentence of Subparagraph 3.17.1 of the General Conditions or other provisions of the Contract Documents.

7.1.5.6 Deposits lost for causes other than the Contractor's fault or negligence.

7.1.6 OTHER COSTS

7.1.6.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

EDIT **7.2 EMERGENCIES; REPAIRS TO DAMAGED, DEFECTIVE OR NONCONFORMING WORK**

The Cost of the Work shall also include costs described in Paragraph 7.1 which are incurred by the Contractor:

7.2.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.3 of the General Conditions.

7.2.2 In repairing or correcting Work damaged or improperly executed by construction workers in the employ of the Contractor, provided such damage or improper execution did not result from the fault or negligence of the Contractor or the Contractor's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Contractor.

7.2.3 In repairing damaged Work other than that described in Subparagraph 7.2.2, provided such damage did not result from the fault or negligence of the Contractor or the Contractor's personnel, and only to the extent that the cost of such repairs is not recoverable by the Contractor from others and the Contractor is not compensated therefor by insurance or otherwise.

7.2.4 In correcting defective or nonconforming Work performed or supplied by a Subcontractor or material supplier and not corrected by them, provided such defective or nonconforming Work did not result from the fault or neglect of the Contractor or the Contractor's personnel adequately to supervise and direct the Work of the Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the Contractor from the Subcontractor or material supplier.

EDIT

ARTICLE 8
COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Clauses 7.1.1.2 and 7.1.1.3 or as may be provided in Article 14.

EDIT **8.1.2** Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Clause 7.1.4.2.

8.1.6 Except as provided in Subparagraphs 7.2.2 through 7.2.4 and Paragraph 13.5 of this Agreement, costs due to the fault or negligence of the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded.

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ARTICLE 9

DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

9.2 Amounts which accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10

SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner will then determine, with the advice of the Contractor and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids; however, if a Guaranteed Maximum Price has been established, the Owner may not prohibit the Contractor from obtaining bids from others. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted; then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the payment provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11

ACCOUNTING RECORDS

11.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12

PROGRESS PAYMENTS

12.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

12.3 Provided an Application for Payment (certified by the Contractor) is received by the Architect not later than the 10th day of a month, the Owner shall make payment to the Contractor not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 20 days after the Architect receives the Application for Payment.

EDIT) ~~12.4 With each Application for Payment the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices~~ with check vouchers attached, and any other evidence required by the Owner or Architect ~~to demonstrate that cash disbursements~~ already made by the Contractor on account of the Cost ~~of the Work equal or exceed~~ (1) progress payments already received by the Contractor; less (2) that ~~portion of those payments~~ attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the ~~present Application for Payment; plus (4) retainage provided in Subparagraph 12.5.4, if any, applicable to prior progress payments.~~

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12.5 CONTRACTS WITH A GUARANTEED MAXIMUM PRICE

12.5.1 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.5.2 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.5.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

12.5.3.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

12.5.3.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

12.5.3.3 Add the Contractor's Fee, less retainage of TEN percent (10. %). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Paragraph 5.1 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

12.5.3.4 Subtract the aggregate of previous payments made by the Owner.

12.5.3.5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

12.5.3.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

EDIT 〉 **12.5.4** Additional retainage, if any, shall be as follows:

(If it is intended to retain additional amounts from progress payments to the Contractor beyond (1) the retainage from the Contractor's Fee provided in Clause 12.5.3.3, (2) the retainage from Subcontractors provided in Paragraph 12.7 below, and (3) the retainage, if any, provided by other provisions of the Contract, insert provision for such additional retainage here. Such provision, if made, should also describe any arrangement for limiting or reducing the amount retained after the Work reaches a certain state of completion.)

~~**12.6 CONTRACTS WITHOUT A GUARANTEED MAXIMUM PRICE**~~ (Does not apply)

~~**12.6.1** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period~~ covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

12.6.2 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

12.6.2.1 Take the Cost of the Work as described in Subparagraph 12.6.1.

12.6.2.2 Add the Contractor's Fee, less retainage of percent (%). The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding Clause 12.6.2.1 at the rate stated in Paragraph 5.1 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding Clause bears to a reasonable estimate of the probable Cost of the Work upon its completion.

12.6.2.3 Subtract the aggregate of previous payments made by the Owner.

12.6.2.4 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.4 or to substantiate prior Applications for Payment or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

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~~12.6.3.5 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.~~

~~12.6.6 Additional retainage, if any, shall be as follows:~~

12.7 Except with the Owner's prior approval, payments to Subcontractors included in the Contractor's Applications for Payment shall not exceed an amount for each Subcontractor calculated as follows:

12.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion in the Subcontractor's schedule of values, less retainage of TEN percent (10 %). Pending final determination of amounts to be paid to the Subcontractor for changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Subcontract Sum has not yet been adjusted by Change Order.

12.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of TEN percent (10 %).

12.7.3 Subtract the aggregate of previous payments made by the Contractor to the Subcontractor.

12.7.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment by the Owner to the Contractor for reasons which are the fault of the Subcontractor.

12.7.5 Add, upon Substantial Completion of the entire Work of the Contractor, a sum sufficient to increase the total payments to the Subcontractor to ONE HUNDRED percent (100 %) of the Subcontract Sum, less amounts, if any, for incomplete Work and unsettled claims; and, if final completion of the entire Work is thereafter materially delayed through no fault of the Subcontractor, add any additional amounts payable on account of Work of the Subcontractor in accordance with Subparagraph 9.10.3 of the General Conditions.

(If it is intended, prior to Substantial Completion of the entire Work of the Contractor, to reduce or limit the retainage from Subcontractors resulting from the percentages inserted in Subparagraphs 12.7.1 and 12.7.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Until the Work is fifty percent (50%) complete, the Owner shall pay ninety percent (90%) of the amount requested in each Application for Payment within each line item of the Schedule of Values (as described in the Supplementary Conditions). Thereafter, amounts included within a Progress Payment within a particular line item of the Schedule of Values shall be made up to one hundred percent (100%) of the amount requested; provided, however, that any such reduction in retainage shall be made only if in the sole and absolute discretion of the Owner and the Architect*

The Subcontract Sum is the total amount stipulated in the subcontract to be paid by the Contractor to the Subcontractor for the Subcontractor's performance of the subcontract.

12.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

12.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 12.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

*satisfactory progress is being made in the Work. Retention related to a line item Change Order amount shall be in accordance with the above as related to the progress of the Change in the Work.

ARTICLE 13
FINAL PAYMENT

13.1 Final payment shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct defective or nonconforming Work, as provided in Subparagraph 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Pay-

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ment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

13.2 The amount of the final payment shall be calculated as follows:

13.2.1 Take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee; but not more than the Guaranteed Maximum Price, if any.

13.2.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of the General Conditions or other provisions of the Contract Documents.

13.2.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the Owner.

13.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Paragraph 13.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the General Conditions. The time periods stated in this Paragraph 13.3 supersede those stated in Subparagraph 9.4.1 of the General Conditions.

13.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

13.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

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ARTICLE 14
MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

EDIT)

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

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14.3 Other provisions:

See "Amendment A" Amendment to the 1987 Edition of AIA Document A111.

ARTICLE 15

TERMINATION OR SUSPENSION

15.1 The Contract may be terminated by the Contractor as provided in Article 14 of the General Conditions; however, the amount to be paid to the Contractor under Subparagraph 14.1.2 of the General Conditions shall not exceed the amount the Contractor would be entitled to receive under Paragraph 15.3 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

15.2 If a Guaranteed Maximum Price is established in Article 5, the Contract may be terminated by the Owner for cause as provided in Article 14 of the General Conditions; however, the amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of the General Conditions shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount the Contractor would be entitled to receive under Paragraph 15.3 below.

15.3 If no Guaranteed Maximum Price is established in Article 5, the Contract may be terminated by the Owner for cause as provided in Article 14 of the General Conditions; however, the Owner shall then pay the Contractor an amount calculated as follows:

15.3.1 Take the Cost of the Work incurred by the Contractor to the date of termination.

15.3.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

15.3.3 Subtract the aggregate of previous payments made by the Owner.

The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Subparagraph 15.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 15, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

15.4 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price, if any, shall be increased as provided in Subparagraph 14.3.2 of the General Conditions except that the term "cost of performance of the Contract" in that Subparagraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Paragraphs 5.1 and 6.3 of this Agreement.

ARTICLE 16

ENUMERATION OF CONTRACT DOCUMENTS

16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

16.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A111, 1987 Edition.

16.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.

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UP086049

Exhibit A

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16.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
Doc. No. 00800-Supplementary Conditions		

16.1.4 The Specifications are those contained in the Project Manual dated as in Paragraph 16.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
Exhibit to be added by Construction Change Order or other approved Change Order.		

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UP086050

Exhibit A
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16.1.5 The Drawings are as follows, and are dated unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

Exhibit to be added by Construction Change Order or other approved Change Order.

16.1.6 The addenda, if any, are as follows:

Number	Date	Pages

None.

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

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UP086051

Exhibit A

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16.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Letter of Intent (Exhibit A to Amendment A)

Construction Schedule (Exhibit B to Amendment A)

Salary and Benefits Schedule (Exhibit C to Amendment A)

Subcontract Forms (Exhibit D to Amendment A)
1) Application for Payment
2) Trade Payment Breakdown
3) Subcontract Agreement K-100A

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER: MARINA VILLAGE ASSOCIATES

See Amendment "A"

(Signature)

(Printed name and title)

CONTRACTOR: TRCC, INC., A CALIFORNIA CORPORATION, DBA ROLL CONSTRUCTION LICENSE #491751

(Signature)

See Amendment "A"

(Printed name and title)

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UP086052

Exhibit A

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TRACK 2 EXHIBIT 179
DATE 11-8-05
WITNESS: Hussey Vol. 1
15 PAGE(S)

AMENDMENT "A"
Amendment to the 1987 Edition
of AIA Document A111

THIS AMENDMENT is attached to and incorporated in that certain document entitled "Standard Form of Agreement Between Owner and Contractor (AIA Document A111, 1987)" (the "Contract"), as the parties desire to amend said document. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of this Amendment and those of the Standard Form A111, this Amendment shall govern. The terms and provisions of the Standard Form A111 are hereby amended as follows:

Article 1

Add subparagraphs as follows:

1.2 Owner has entered into that certain Owner Participation Agreement by and between Redevelopment Agency of the City of San Diego and Owner dated October 12, 1990 filed as Document No. 1776 in the Office of the Redevelopment Agency of San Diego, California on December 5, 1990 ("Participation Agreement") to assist in the orderly development of the Project. In accordance with Section 310 of the Participation Agreement, Contractor agrees that it shall not discriminate against any employee or applicant for employment because of sex, marital status, race, color, creed, religion, national origin or ancestry. In addition, Contractor shall comply with the "Equal Opportunity Program" and the "Equal Employment Opportunity" provisions of the Participation Agreement. Except for the foregoing matters, Contractor shall have no obligations with respect to the Participation Agreement.

1.3 Owner has entered into that certain Prime Construction Contract ("Prime Construction Contract") with Kabuto Decom, Inc., a Japanese corporation ("Prime Contractor"). The Contract Documents shall be subject to the terms and conditions of the Prime Construction Contract other than Sections 1(d) and 3. Notwithstanding the Prime Construction Contract, Contractor shall be the general contractor for the Project.

1.4 Prior to the date of this Contract and pursuant to that certain Letter of Intent from Owner to Contractor dated July 29, 1991 ("Letter of Intent"), Contractor has performed certain site preparation work related to the Property (the "Prior Work"). A copy of the Letter of Intent is attached hereto as Exhibit A. Except with respect to the descriptions of the Excavation Change Order and the Construction Change Order, this Contract shall supersede and cancel in all respects the Letter of Intent and shall govern the obligations of the parties relating to all Work to be performed from and after the date hereof. Owner will pay Contractor for Work performed pursuant to the Letter of Intent

August 26, 1991

until such time as the Excavation Change Order is executed, at which time the terms of the Contract shall control in all events. Notwithstanding the foregoing, the Letter of Intent describes the two anticipated Change Orders to the Contract Documents, identified as the Excavation Change Order and the Construction Change Order. As used in these Contract Documents, the term "Excavation Change Order" shall mean and refer to an approved Change Order intended to expand the scope of Work to include the Site Preparation Work as described in the Letter of Intent and Excavation Work on the Project Site. The term "Construction Change Order" will mean an approved Change Order including a detailed estimate of the Total Cost of the Work ("Estimate") for the entire Project and which shall expand the scope of Work to include the entire Project. If Contractor's estimate of the total Cost of the Work included as part of the proposed Construction Change Order is not acceptable to Owner, or for the sole convenience of Owner, Owner may terminate the Contract effective upon completion of the portion of the Work to be described in the Excavation Change Order with no further obligation to Contractor except for payment of costs plus the applicable portion of the Contractor's Fee for work completed through such termination date. Sections II and III of the Letter of Intent ("EXCAVATION" and "CONSTRUCTION", respectively) are hereby incorporated by reference to the extent that they are not inconsistent with the terms and conditions of the Contract Documents. Contractor hereby subordinates any and all liens, whether mechanic's, materialmen or otherwise, arising from or in any way related to the Prior Work to the lien of any construction financing which is secured by a lien on the title of Owner to the Project. Such subordination shall be specifically evidenced by execution of a specific subordination agreement in form and content satisfactory to Owner, its construction lender and to Contractor, to be executed and delivered by Contractor within five (5) days of a request therefore by Owner. Contractor acknowledges its agreement to subordinate any and all liens relating to the Prior Work is a material inducement to Owner to enter into this Contract and Owner is relying on such subordination.

ARTICLE 3

RELATIONSHIP OF THE PARTIES

3.1 Insert in the second line of Paragraph 3.1 between the words "Architect" and "and" the words "and the consultants retained by Owner". Add as the last sentence the following: "Except as is expressly authorized herein, the Contractor has no right or authority of any kind to act as the representative of or on behalf of the Owner, and is not an agent of Owner."

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ARTICLE 4

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Delete paragraph 4.1 in its entirety and replace with the following:

4.1 The Work to be performed under this Contract shall be commenced upon receipt of confirmation of Owner's financing and a valid building permit and within ten (10) days of a written notice from Owner to proceed. The Work shall be substantially completed as shown on the Construction Schedule attached as Exhibit B, within five hundred sixty-seven (567) days after the Commencement Date ("Substantial Completion Date") as may be modified in a Construction Schedule to become part of this Contract pursuant to an approved Change Order, including, but not limited to, the Excavation Change Order and the Construction Change Order. The foregoing schedule for Substantial Completion allows for fifteen (15) days during which Contractor is prevented from performing the Work due to rain or other adverse weather conditions ("Rain Days"). Contractor shall not be entitled to any extensions of time under the Contract Documents due to delays caused by rain or other adverse weather conditions unless and only to the extent that more than fifteen (15) Rain Days occur. The Construction Schedule will contain dates for the substantial completion of particular components of the Project, including the model condominiums and the Soap Factory Building. After the Contract Time has been established, the Contract Time may only be extended pursuant to the provisions of General Conditions Paragraph 8.3.

Delete paragraph 4.2 in its entirety and replace with the following:

4.2 If the Substantial Completion Date is delayed Owner will suffer damages. In such event, Owner will be entitled to pursue whatever remedies it may have at law or in equity.

ARTICLE 5

CONTRACT SUM

5.1.3 The Excavation Change Order shall be drafted and submitted for consideration of Owner and Contractor. The Estimate shall be delivered by Contractor to Owner no later than forty-five (45) days after Owner delivers to Contractor ninety-five percent (95%) complete Contract Documents, which occurred on August 5, 1991. The Estimate shall serve as the basis for the prompt preparation of the proposed Construction Change Order.

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ARTICLE 7

COSTS TO BE REIMBURSED

In paragraph 7.1.1.1, Delete the period after "workshops", add a comma, and add the following:

...in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage and benefits schedule agreed upon by the Owner and Contractor, as per Exhibit C, Salary and Benefits Schedule .

Delete paragraph 7.1.1.2 in its entirety and replace with the following:

7.1.1.2 Salaries and compensation paid for Contractor's personnel when stationed at the principal office, field office, at shops, or on the road, only when involved in the direct management of the Project and in purchasing or expediting the production or transportation of materials or equipment, or whatever capacity employed for their time spent on the Work.

Delete paragraph 7.1.1.3 in its entirety.

In paragraph 7.1.1.4 Delete reference to Clause 7.1.1. and add the following:

Reimbursement for the costs to be incurred by Contractor as contemplated by this Paragraph 7.1.1.4 shall be at the rate of thirty-three percent (33%) (the "reimbursement factor") of the salaries and compensation paid by Contractor and included in the Cost of the Work under Paragraph 7.1.1.2.

In paragraph 7.1.4.3, After the word "removal" and before the word "of", add "and disposal".

In paragraph 7.1.4.4, Delete period at end of sentence and add the following:

...including costs of reproduction of drawings,specifications, and other documents necessary for the execution of the work and utility consumption costs, including, but not limited to, water, steam, gas, oil, electricity, snow removal, winterizing, and temporary toilets.

In paragraph 7.1.5.1, Delete period at end of sentence and add the following:

...and all insurance deductibles attributable to a loss not caused by the negligence of the Contractor. Contractor's liability insurance shall be included at the rate of .0055 times the total Cost of the Work.

In paragraph 7.1.6, Add the following:

7.1.6.2 To the extent required or approved in advance by Owner, all costs and fees associated with altering of public utility, protection of adjoining property, and rental property for storage of materials to be incorporated in the Work.

Add a paragraph 7.3:

7.3 Only with the prior consent of the Owner, the Cost of the Work shall include the cost of legal fees and expenses reasonably necessary and properly incurred in connection only with labor disputes, negotiations, liens or other matters between Contractor and labor unions, suppliers or Subcontractors where such labor disputes, negotiations, liens or other matters are regional or industry-wide in nature, are not the result of Contractor acting in a negligent, bad faith or other culpable fashion, and are not the result of Contractor's wrongful or unexcused failure to pay or discharge its obligations hereunder.

ARTICLE 8

In paragraph 8.1, Add the following:

8.1.1.1 The cost of legal fees and expenses, including those involved in handling any labor disputes, negotiations, liens or other matters between Contractor and suppliers, Subcontractors, subcontractor sureties and labor unions which are not included within the Cost of the Work pursuant to Section 7.3 above.

ARTICLE 12

PROGRESS PAYMENTS

In paragraph 12.1, add the following at the end thereof:

Pursuant to the Prime Construction Contract, all payments to Contractor shall be disbursed by Prime Contractor to Contractor; provided, however, that Owner's payment of any funds to the Prime Contractor shall not excuse Owner's obligations to make Progress Payments when and as required by the Contract Documents.

In paragraph 12.3, add the following:

12.2.3.1 Payments by Owner shall be wired to:

Wells Fargo Bank
Orange County Airport Branch
4590 MacArthur Boulevard
Newport Beach, California 92660

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For the account of:

Koll Construction
No. 4692047772
(Have the Bank notify Jim Summerford at 714/833-3030)

Job Name & Job No.
[AS NOTED ON PAGE 1 OF THE CONTRACT]

Delete paragraph 12.4 in its entirety and replace with the following:

12.4.1 With each Application for Payment the Contractor shall provide (i) a statement certifying (notarized if required by the Owner) that the Work has progressed as indicated, (ii) a statement that all amounts shown as previous payments have been paid and all amounts of the current request will be paid, (iii) a fully executed conditional lien release from the Contractor for the Work which is the subject of the current Application for Payment, (iv) a fully executed unconditional lien release from the Contractor for the Work which was the subject of the prior month's Application for Payment if the prior month's disbursement has been made, (v) fully executed unconditional lien releases from all affected Subcontractors for the Work which was the subject of the Application for Payment for the month before the prior month if the prior month's disbursement was not made at least ten (10) days prior to the date of the next Application for Payment, and for the prior month if the prior month's disbursement has been made at lease ten (10) days prior to the date of such Application for Payment, (vi) fully executed conditional lien releases from all affected Subcontractors for the Work which was the subject of the Application for Payment for the prior month if the prior month's disbursement was not made ten (10) days prior to the date of such Application for Payment, and (vii) waivers and such other affidavits, certificates, information, data and schedules from all Subcontractors and materialmen performing work on the Project. Contractor's accounting records shall be available for audit by Owner to demonstrate the current Application for Payment made on account of the Cost of the Work represents the value of work complete less any prior Applications for Payment by the Contractor.

12.4.2 As a condition to the payment of each Progress Payment, Contractor shall have delivered to Owner such documentation as the title insurance company engaged by Owner deems reasonably necessary to enable the title insurer to issue an endorsement to the policy of title insurance insuring Owner and Owner's construction lender, if any.

12.4.3 Thirty-five (35) days after Substantial Completion, any unpaid balance plus the remaining retention will be paid to the Contractor. Should minor items remain to be completed, the Contractor and the Owner or Architect shall list such items and the

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Contractor's written acceptance of such list shall constitute his unconditional promise to complete said items within a reasonable time thereafter. The Owner may retain a sum equal to one hundred fifty percent (150%) of the estimated cost of completing any unfinished items, as reasonably estimated by the Owner and the Architect. Thereafter, Owner shall pay to the Contractor monthly the amount retained for incomplete items as each of said items is completed.

Add the following:

12.5.4 During the course of construction, each Application for Payment shall be subject to a retention as indicated in this Agreement, except for those items of Work: (i) agreed upon between Owner and Contractor in writing or (ii) where a lesser retention is required by law. In addition, subject to the approval of the Owner and Lender (which approval may be given or withheld in Owner's sole and absolute discretion), the retention requirements may be modified where full or extended retention is not warranted.

ARTICLE 13

FINAL PAYMENT

13.6 Notwithstanding any other provision contained in this Agreement or the Contract Documents, final payment will not be due or owing until Contractor has delivered to Owner such evidence of full payment and unconditional lien releases from all Subcontractors (with the exception of retentions and final payments which are to be paid out of the final payment of the Owner to the Contractor) in the absence of any liens generated by the Work as may be required by the Owner, Owner's construction or permanent lender or a title insurance carrier.

ARTICLE 14

MISCELLANEOUS PROVISIONS

Add the following:

14.2.1 In the event that any payments are not made by the Owner to the Contractor within twenty (20) days after the due date thereof in accordance with the Contract Documents, said payments shall bear interest from the date twenty (20) days after the payment was due until paid at the rate equal to the lesser of (i) of five percent (5%) per annum over the discount rate of the Federal Reserve Bank San Francisco prevailing on the 25th day of the month preceding the date that payment was due or (ii) eleven percent (11%) per annum. The fact that the Contractor is charging interest in accordance with this provision, shall not constitute waiver by Contractor of any other rights or remedies provided for herein by reason of Owner's default in making such payments including specifically, but not limited to, Contractor's rights to terminate this Contract for nonpayment.

14.3.1 Destruction of the Work by Fire, Elements, etc.,
(a) In the event the Work herein be wholly or partially damaged or destroyed by war, fire, storm, lightning, flood, earthquake, settlement or defective soil, expansion or contraction, cracking or deflection, tidal wave, mob violence, vandalism or other casualty before the final completion of said Work, the Contractor, upon written instructions from the Owner, shall proceed to replace and/or repair said Work in accordance with the plans. In this event, the provisions of this Agreement shall remain in full force and effect, except that the Guaranteed Maximum Price stated in Article 5 shall be increased by the total cost of removing and/or replacing all damaged and/or destroyed work, the time for completion shall be extended and the Contractor's fee shall be increased. All such increases shall be provided in a Change Order proposal for the approval of Owner and the Architect.

(b) In the event of substantial damage or destruction to the Work by any cause, the Owner may, upon giving written notice to the Contractor, elect to terminate this Agreement. In such case, the Owner shall pay the Contractor pursuant to Paragraph 14.4.3 of the Supplementary General Conditions.

(c) Owner will obtain, prior to the commencement of the Work, Flood, Fire and Extended Coverage Insurance, including "All risk" insurance for malicious mischief and vandalism and such other additional insurance as he may desire to insure those casualties enumerated in Paragraph (a) upon the Work and upon all materials intended to become a part of the Work, whether on-site, temporarily stored elsewhere or in transit. Except as specifically set forth in the Contract Documents, Owner will be responsible for the amounts of deductibles in such additional insurance and for costs not covered by said insurance. Owner may also obtain, in its own discretion, insurance for damage caused by earthquakes. A copy of each policy shall be submitted to the Contractor for its review and approval, which approval will not be unreasonably withheld. The Contractor and all subcontractors shall be named as "Additional Insureds" and each policy shall include a Wavier of Subrogation and Permission to Occupy Endorsement.

14.3.3 DAMAGE AND INDEMNITY: Notwithstanding any of the provisions in the Contract to the contrary, Contractor shall in no event have any responsibility, nor be liable to Owner, for damages or delays resulting from soil subsidence (which shall not include damages or delays resulting from or related to improper construction methods or techniques) or the presence of pollutants, gaseous emissions, asbestos, hazardous or toxic substances prior to the commencement of Work as described in Paragraph 4.1 above, or where caused by Owner or other contractors separately engaged by Owner, whether subsurface or otherwise, unless and to the extent

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caused by the negligence or willful misconduct of Contractor. Owner will fully hold harmless, indemnify and defend Contractor from and against any and all claims or actions resulting from the presence prior to the commencement of Work as described in Paragraph 4.1 above and/or caused by Owner or other contractors separately engaged by Owner in connection with the Project, of any such pollutants, gaseous emissions, asbestos, hazardous and/or toxic substances, whether subsurface or otherwise.

14.3.4 ALLOWANCE. Any allowances included in this Contract include the cost of material, equipment and labor. When the actual cost of any allowance item is established, it will include the cost of material, equipment and labor.

14.3.5 LICENSE. Contractor represents and warrants it is a duly licensed contractor under the laws of the State of California and that its contractor's license number is 491751. Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the Registrar of the Board whose address is:

Contractor's State License Board
3132 Bradshaw Road
Sacramento, California 95826

14.3.6 SERVICE OF NOTICES. All notices or other communications required or permitted hereunder shall be in writing, and shall be sent certified mail, postage paid, return receipt requested, or nationally recognized over-night delivery service and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, four (4) business days after the date of posting by the United States post office; or (iii) if given by over-night courier service marked for next business delivery, the next business day.

14.3.7 Any written notice hereunder directed to Contractor may be served personally on its project manager at the job site, or by certified mail addressed to Contractor at Koll Construction (address indicated below).

14.3.8 Any written notice hereunder directed to Owner may be served personally on the Owner's representatives on the job site, or by certified mail address of the Owner at the address indicated below.

14.3.9 Any written notice hereunder directed to Architect may be given as set forth herein to the address indicated below.

CONTRACTOR: Koll Construction
7330 Engineer Road
San Diego, CA 92111

Attn: Gene Hussey

With a copy to: Koll Construction
3020 Old Ranch Parkway, Suite 250
Seal Beach, California 90740-2751

Attn: Victor D. Laidlaw

OWNER: (As Noted on Contract, Page 1)

ARCHITECT: (As Noted on Contract, Page 1)

14.3.10 Contractor hereby agrees to consent in writing to the assignment by Owner of its interest in the Contract Documents to Owner's construction lender, if any. In connection with the financing of the Project, Contractor and all Subcontractors must execute and deliver, and (if appropriate) acknowledge, any and all instruments reasonably required by Owner or any lender, including, but not limited to, subordinating any rights, interests, and claims under the Contract Documents, subcontracts, at law, or otherwise, to the liens, benefits, rights and privileges of any lender. The consent of Contractor set forth in this Subparagraph 14.3.10 shall be subject to Contractor's approval of the language requested in any such instrument acknowledging such assignment, which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in the Contract Documents, Contractor and Owner agree that the procedures for payment set forth in the Contract Documents, the insurance requirements and other provisions thereof are subject to modification if requested by Owner's construction lender or as may be necessary for Owner to comply with the terms and provisions of its construction loan.

14.3.11 The Contractor hereby subordinates all Contractor's, laborer's, mechanics, materialmen's and other similar liens that it may have or acquire under the Contract Documents or otherwise as to the Work or the Site to the lien and security interest securing payment of sums now or hereafter borrowed by Owner from any lender. At the request of Owner, the Contractor shall execute such additional documents as may be requested from time to time by the Owner or any lender to evidence the provisions hereof, and shall cause subcontractors and other parties furnishing labor or materials for the Work to subordinate their liens to such aforesaid sums.

14.3.12 Except as set forth in Paragraph 1.4 above, the terms of the Contract Documents are intended by the parties to be a final expression of their understanding with respect to such terms as are included in the Contract Documents and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings including, but not limited to, that certain Letter of Intent from Owner to Contractor dated July 29, 1991. Additionally, the parties hereby expressly agree that no such statements, representations, agreements or understandings exist. The parties further intend that the Contract Documents constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the Contract Documents. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in a writing signed by the parties hereto.

14.3.13 Notwithstanding anything in the Contract Documents to the contrary, the Owner shall have, at all reasonable times, the right to enter the Project for the purpose of conducting marketing activities and observing the Work, and Contractor shall provide for such access.

14.3.16 If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the terms hereof, the losing or defaulting party shall pay to the prevailing party the costs and expenses incurred in connection with the prosecution or defense of such action, including reasonable attorneys' fees.

14.3.17 Contractor agrees that it will not, without the prior written approval of the Owner, (i) publicize the fact that the Owner has entered into the Contract Documents, or (ii) disclose, confirm or deny any details of the Contract Documents. Contractor agrees that it will not use Owner's name in connection with Contractor's publicity with respect to the Project without the prior review and written approval for each type of marketing use by Owner. Contractor shall also insert the terms of this provision in all contracts and/or agreements executed in connection with the services to be performed under the Contract Documents and shall pass such provision to its subcontractors under such contracts and/or agreements.

14.3.18 Contractor shall not assign the whole or any portion of his interest under the Contract Documents or any payments due or to become due Contractor hereunder nor subcontract any of his obligations hereunder without first obtaining in each instance the prior written consent of Owner. No assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, shall be valid or effective without such prior written consent of Owner or, even if Owner consents, shall operate to release Contractor from its obligations hereunder. Should Contractor attempt to make or suffer to be made any such assignment, except as aforesaid, Owner may, at its option, terminate the agreements contained within the Contract Documents upon written notice to Contractor. Should Owner consent to any such assignment, such consent shall not constitute a waiver of any of the restrictions of this Paragraph and the same shall apply to each successive assignment hereunder, if any. If Contractor requests Owner's consent to an assignment Contract to an affiliate of Contractor, Owner shall not unreasonably withhold its consent. Owner may assign its interest in the Contract Documents with the prior written consent of Contractor, which consent shall not be unreasonably withheld. Contractor's consent to an assignment by Owner shall not be required in the event that Owner is assigning its interest in the Contract Documents to an affiliate of Owner. Notwithstanding the foregoing, the assignment by Owner of its interest in the Contract Documents to Owner's construction lender shall be pursuant to Subparagraph 14.3.10 above. As used in this paragraph, the term "affiliate" shall mean and refer to any parent or subsidiary of the designated entity or a partnership composed solely of all or some of the foregoing.

14.3.19 The Owner and Contractor, with the assistance of the Architect and other consultants, shall negotiate in good faith to develop an "after market" warranty program specifically designed to reduce the exposure to disputes with the condominium Home Owners' Association or other entities. The purpose of this program shall be to furnish responsive, proactive management of home owner concerns and complaints. If such a program is agreed upon, it may include a sum identified by Change Order and set aside from the Owner's construction financing to fund this requirement. If such program is established, Contractor shall implement corrective actions under this warranty program and seek reimbursement from this fund. The amount and administration of this fund shall be mutually agreed to by the Ownerand Contractor. Owner and Contractor shall enter into an agreement incorporating the final form of such program no later than the date of the Construction Change Order.

14.3.20 The Owner will designate an authorized representative for the purposes of authorizing additional work, executing Change Orders, approving payment requests, etc.

14.3.21 The contingency line item to be shown as part of the Guaranteed Maximum Price may be used at the reasonable discretion of the Contractor for unforeseen, unanticipated, or unestimated costs that occur within the original scope of the Project as defined by the Contract Documents. The contingency shall not be used for costs resulting from the sole fault or negligence of the Contractor, any Subcontractor and anyone for whose acts either of them may be liable nor for changes in the scope or duration of the Project, as also described in Paragraph 8.3.4 of the Supplementary Conditions. The contingency amount remaining after issuance of the final Certificate for Payment shall be subject to the Owner/Contractor savings participation described in Paragraph 5.2.1 above.

14.3.22 The form of subcontract to be used by Contractor for all Subcontracts is attached hereto as Exhibit D and is incorporated herein by reference.

14.3.23 Contractor hereby agrees to indemnify, defend with counsel reasonably acceptable to Prime Contractor and hold harmless Prime Contractor, its officers, directors, agents, independent contractors and employees from and against, and to the extent permitted by law, Contractor hereby waives any and all claims it or any of its successors in interest may now or at any time hereafter have against Prime Contractor or Prime Contractor's officers, directors, agents, independent contractors or employees in connection with, any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including without limitation reasonable attorneys' fees), arising directly or indirectly, in whole or in part, out of or in connection with the Prime Construction Contract or the Services (as defined in the Prime Construction Contract), or any matter related to the Prime Construction Contract or the Services, or any matter related to the Project, the Project Work (as defined in the Prime Construction Contract), the acts or omissions of the Prime Contractor or any other contractors retained by Owner or Contractor, the conduct of the business of Owner or any action taken in connection with the Prime Construction Contract or the Services by Prime Contractor or any officer, director, agent, independent contractor or employee of Prime Contractor including, without limitation the negligence of Prime Contractor or any officer, director, agent, independent contractor or employee of Prime Contractor, excluding only such of the foregoing as result from the willful misconduct, fraud or gross negligence of Prime Contractor or from the willful misconduct, fraud or gross negligence of any of Prime Contractor's officers, directors, agents or employees (to the extent the same is legally attributable to Prime Contractor), unless Contractor shall have knowingly approved any such willful misconduct, fraud or gross negligence or participated therein. The provisions of this Paragraph shall survive termination of this Contract.

[Remainder of page intentionally left blank]

14.3.24 Contractor acknowledges and agrees that neither the Prime Contractor nor any of its officers, directors, agents, independent contractors or employees shall be liable to Contractor for any failure on the part of the Prime Contractor to provide or furnish any of the Services required pursuant to the Prime Construction Contract. Contractor agrees that Owner will, with due diligence, seek to obtain from Prime Contractor workers compensation and liability insurance if Prime Contractor is to allow any of its employees to be on the Project Site or Prime Contractor is to store any materials or equipment on the Project Site.

OWNER:

MARINA VILLAGE ASSOCIATES, a California general partnership

By: Urban Partners, L.P., a California limited partnership, General Partner

By: Urban West Associates, a California general partnership, General Partner

By: The Kriozere Corporation, a California corporation, Managing General Partner

By: [signature]
Michael Kriozere, President

By: GENTIUM REALTY INVESTMENTS CORP., a California corporation, General Partner

By: [signature]
Its: President

CONTRACTOR:

TKCC, INC., a California Corporation, dba KOLL CONSTRUCTION

By: ______________________
Its: ______________________

By: ______________________
Its: ______________________

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14.3.24 Contractor acknowledges and agrees that neither the Prime Contractor nor any of its officers, directors, agents, independent contractors or employees shall be liable to Contractor for any failure on the part of the Prime Contractor to provide or furnish any of the Services required pursuant to the Prime Construction Contract. Contractor agrees that Owner will, with due diligence, seek to obtain from Prime Contractor workers compensation and liability insurance if Prime Contractor is to allow any of its employees to be on the Project Site or Prime Contractor is to store any materials or equipment on the Project Site.

OWNER:

MARINA VILLAGE ASSOCIATES, a California general partnership

By: Urban Partners, L.P., a California limited partnership, General Partner

By: Urban West Associates, a California general partnership, General Partner

By: The Kriozere Corporation, a California corporation, Managing General Partner

By:____________________
Michael Kriozere, President

By: GENTIUM REALTY INVESTMENTS CORP., a California corporation, General Partner

By:____________________
Its:____________________

CONTRACTOR:

TKCC, INC., a California Corporation, dba KOLL CONSTRUCTION

By: [signature]
Its: Exec. Vice President

By: [signature]
Its: SR. VICE PRESIDENT

TRACK 2 EXHIBIT 180
DATE 11-8-05
WITNESS: Hussey Vol. I
23 PAGE(S)

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July 29, 1991

Mr. Gene Hussey
Vice President
Koll Construction
7330 Engineer Road
San Diego, California 92111

Re: Letter of Intent
CityFront Terrace
San Diego, California ("Project")

Dear Mr. Hussey:

Please be advised that it is the intent of Marina Village Associates ("MVA") to enter into a Guaranteed Maximum Price (GMP) contract ("Agreement") for the construction of the Project, which consisting of a new thirteen story condominium apartment building and a four story existing building rehabilitated for condominium use. Except as expressly set forth below in the section entitled "Site Preparation," this letter is not a binding contractual commitment or obligation on the part of either MVA or TKCC dba Koll Construction ("KC"). It is merely intended to serve as a means of describing the essential elements of a future contract to expedite the process of preparing necessary documents.

I. SITE PREPARATION.

Until such time as the Agreement is entered into, the following will serve as our agreement with respect to the obligations of MVA and KC with regards to work intended to be general preparation of the site ("Site Preparation") (such as cleaning, barricade construction, and mobilization activities) (the Site Preparation work is further described on Exhibit A attached hereto), and which does not include any excavation, major demolition or construction activities:

1. You have been granted a license to enter upon the Project site for the sole purpose of performing

EXHIBIT A

Mr. Gene Hussey
July 29, 1991
Page 2

Site Preparation work. Except for payment due from MVA to KC as set forth in Paragraphs 3 and 4 below, KC hereby agrees to indemnify, defend and hold MVA and Draper and Kramer, Incorporated, harmless from any claims, obligations, damages or liabilities (including attorneys' fees and costs) related in any way to KC's presence on the Project site or performance of the Site Preparation work except to the extent such claims, obligations, damages or liabilities are due to the negligence or intentional misconduct of MVA or Draper and Kramer, Incorporated. KC represents and warrants that the Site Preparation work will be done in a first-class, professional manner, and will be covered by KC's insurance policies normally procured for projects similar to the Project.

2. You are hereby authorized and directed to proceed with the subcontract bidding of the Excavation (as defined below) and associated mobilization activities.

3. MVA acknowledges that KC has relied on this Letter of Intent and will incur costs with respect to administration and mobilization. MVA will (a) reimburse KC for costs associated with Site Preparation work or any other such work only to the extent set forth in this Letter of Intent and (b) pay to KC a contractor's fee of three percent (3%) of the total of the costs specified in (a) above and in Paragraph 4 below. If the Agreement is entered into and a Construction Change Order (as described in Section III below) issued, the aforedescribed contractor's fee for the Site Preparation Work will be included within the amount specified for a contractor's fee in Section III below.

4. Any work performed by KC with its own forces will be reimbursed at the time and material rates set forth on the attached Exhibit B. Supervisory personnel will be reimbursed according to the rates set forth on the same attached Exhibit B.

5. The written consent of MVA is required prior to the letting of any subcontracts by KC with regards to the Project. The parties agree that KC will cause certain iron work and certain electrical work to be performed by subcontractors. Provided

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(a) that MVA has given its written consent as aforesaid, (b) each subcontractor executes an indemnity provision in favor of MVA and Draper and Kramer, Incorporated, similar to the second sentence in Paragraph 1 above, and (c) each subcontractor is required to deliver certificates of insurance as KC normally requires for projects similar to the Project (substantially similar to the copy of a certificate of insurance attached hereto as Exhibit C) naming MVA and Draper and Kramer, Incorporated, as additional named insureds, then subcontractors may be utilized for selected portions of the Site Preparation work.

6. This agreement regarding Site Preparation is expressly made subject to that certain Owner Participation Agreement by and between the Redevelopment Agency of the City of San Diego and MVA dated October 12, 1990, filed as Document No. 1776 in the Office of the Redevelopment Agency of San Diego, California, on December 5, 1990, of which the only relevant portion is (i) a statement regarding an equal opportunity program for qualified minority- and women-owned businesses, (ii) a stated goal of equal employment opportunity, and (iii) a statement of an obligation to refrain from discrimination.

7. MVA will make payments to KC as required above within thirty (30) days of an invoice being submitted from KC to MVA containing (a) a description of the work performed in detail to allow MVA or its consultants to ascertain the extent and amount of the work performed, (b) a conditional lien release signed by KC relating to the work for which payment is currently requested, and (c) except for the first request for payment for Site Preparation work, an unconditional lien release from approved subcontractors for which KC has received payment from MVA for a previous application. Such requests for payment may not be submitted more frequently than once per calendar month. The amount to be paid by MVA to KC pursuant to such a proper payment request will be consistent with the amount which would have been owed had the Agreement been an executed contract.

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Mr. Gene Hussey
July 29, 1991
Page 4

II. EXCAVATION.

In order to meet schedule requirements, the Agreement will be a "zero dollar amount" Guaranteed Maximum Price (GMP) Cost of the Work Plus a Fee Agreement for Construction to be executed as soon as possible. This Agreement must be executed prior to any excavation or work of improvement ("Excavation") being performed on the Project site. As used herein, the term Excavation does not include Site Preparation.

After execution, this zero dollar amount Agreement will then be amended by a Change Order in the amount of the Excavation and Site Preparation work, at the time you have a subcontract award for the Excavation. At this point, the Guaranteed Maximum Price ("GMP") will be the amount of such Change Order, and the scope of work covered by such GMP will be the Excavation and the Site Preparation work. The Excavation Change Order will consist of the sum of the following:

a. The total Cost of the Work as is contemplated in the form of the Agreement described in Section IV Paragraph 1 below, including the total due from MVA to KC for Site Preparation Work pursuant to this Letter of Intent.

b. General Conditions not to exceed a lump sum amount to be agreed upon by MVA and KC in the Excavation Change Order.

c. Insurance not to exceed .55% of the total of a + b above.

d. A fee not to exceed 3.0% of the total of a + b + c above (not including items excluded from the Cost of the Work as set forth in the Agreement) as may be amended by Change Orders.

e. The Agreement and the Excavation Change Order will contain a provision expressly subordinating the amount to be earned and paid under the Agreement pursuant to the Excavation Change Order to the lien of any and all construction financing for the Project which MVA may have at the time of the Excavation Change Order or may at any time in the future obtain.

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Mr. Gene Hussey
July 29, 1991
Page 5

III. CONSTRUCTION.

No later than 45 days after MVA's delivery to KC of 95% complete Contract Documents, currently scheduled for July 31, 1991, KC shall prepare and submit to MVA a detailed estimate of the Total Cost of the Work ("Estimate") consistent with the provisions of the Agreement, not including the Excavation or Site Preparation work, and including an appropriate Contractor's Contingency and Contractor's Fee.

If approved by MVA (in its sole and absolute discretion), the Agreement shall be further amended by a Change Order in the amount of the Estimate. This Construction Change Order will consist of:

a. The total Cost of the Work as is contemplated in the form of the Agreement described in Section IV Paragraph 1 below, but which Change Order amount will not include the amount or scope of the Excavation Change Order.

b. General Conditions not to exceed a lump sum amount to be agreed upon by MVA and KC in the Construction Change Order.

c. Insurance not to exceed .55% of the total of a + b above.

d. A fee not to exceed a lump sum amount to be agreed upon by MVA and KC in Construction Change Order, which the parties currently believe will equal 3.0% of the total of a + b + c above (not including items excluded from the Cost of the Work as set forth in the Agreement) as may be amended by Change Orders.

e. The Contractor Contingency.

f. The Agreement and the Construction Change Order will contain a provision expressly subordinating the amount to be earned and paid under the Agreement pursuant to the Construction Change Order to the lien of any and all construction financing for the Project which MVA may have at the time of the Construction Change Order or may at any time in the future obtain.

After this Construction Change Order, the GMP will be the sum of the amount of the Excavation Change Order plus the amount of the Construction Change Order.

If the Estimate is not acceptable to MVA in its sole and absolute discretion, or for the sole convenience of MVA, MVA may terminate the Agreement upon completion of the Site Preparation and Excavation work with no further obligation to KC.

IV. GENERAL

In fulfilling the intent of the parties described herein, the parties agree that:

1. The form of Agreement will be (a) Cost of the Work Plus a Fee, AIA Document No. 111, 1987 Edition and (b) General Conditions of the Contract for Construction (AIA Document A201, 1987 Edition), both documents subject to such modifications as KC or MVA may desire, each in their sole and absolute discretion.

2. The GMP will apply to all work performed up to a date twelve (12) months following substantial completion of the Project as the contractor's warranty period.

3. Any Contractor Contingency remaining at completion of construction will be shared 25% by KC and 75% by MVA.

4. All scope of work changes will be based upon the direct cost of the work required plus an agreed upon mark-up for General Conditions and a 3.0% contractor's fee. The mark-up for fee will only apply if the increases have reached a total of One Million Dollars. Similarly, if a scope change results in a direct cost credit which together with all previous scope changes have cumulatively reached a total of One Million Dollars, the 3.0% fee associated with same will also be credited.

5. The KC "Project team" will include Mr. Gene Hussey as Project Executive (Principal in Change), Mr. Jack Filer as Senior Project Manager, Mr. Mark Wolford as Project Manager, and Mr. Les Chambers as Field Superintendent.

As stated previously, this Letter of Intent expresses our mutual intent in proceeding on this project and, except as specifically stated in the section entitled "Site Preparation," is not a binding contractual commitment on the part of either MVA or KC. A mutually binding contract for performance of the work will only take the form of the Agreement described above and executed by both parties.

Please indicate your agreement with the terms and provisions set forth in this Letter of Intent by executing one copy of this letter in the space provided below and returning the same to this office.

Sincerely,

Marina Village Associates

By: Urban Partners, general partner

By: Urban West Associates, general partner

By: Kriozere Corp., general partner

By: ______________________
Michael Kriozere

The foregoing Letter of Intent, being a binding agreement only as to the section entitled Site Preparation, is hereby agreed to and accepted.

Date: August 5, 1991

TKCC, INC. (dba Koll Construction), a California corporation

California Contractor's License #491751

By: [signature]
Its: SR. VICE PRESIDENT, CONST.

By: ____________________
Its: ____________________

cc: PPIC - Beverly Wilson
SCB - Tom Humes, Steve Weiss
MWD - Wayne Donaldson
LF - Nancy Scull
DK - Alice Lee, J. Michael Tracy

attachments: Exhibits A, B, and C (to be supplied by KC)

C:\DOS\RCB.DIR\S011902.WP

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CITY FRONT TERRACE
LETTER OF INTENT
EXHIBIT "A"
7-24-91

Drawing KC-1 titled "Pedestrian Walkway / Barricades" prepared by Koll Construction and dated 6-28-91 with latest revision dated 7-24-91.

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CITY FRONT TERRACE
K.C. JOB #1201
GENERAL CONDITIONS - UNIT RATES
THRU AUGUST 15, 1991

EXHIBIT 'B'

Supervision	
Jack Filer, Sr. Project Manager	$44/Hr or $1,760/Wk
Mark Wolford, Project Manager	$42/Hr or $1,680/Wk
Les Chambers, Project Superintendent	$42/Hr or $1,680/Wk
Marty Breen, Project Manager	$37/Hr or $$1,480/Wk
Bob Wilson, Pre-Construction Estimator	$42/Hr or $1,680/Wk
Secretarial/Accounting	$18/Hr
Car Allowance	In above numbers
Insurance/Benefits	33% on above numbers
Miscellaneous Carpenter	$40/Hr
Temporary	
Trailer	$50/Wk
Trailer Furniture	$25/Wk
Extinguishers	$20/Wk
Temp Fence	Covered in Demolition Contract thru Oct. 1st
Toilets	$75/Mo
Project Sign	$500 L.S.
Photographs	$50 L.S.
Trailer set-up/remove	$250 L.S.
Utilities	
Phone Installation	$400 L.S.
Phone Monthly Cost	$200/Mo
Temporary Power - SDG&E	$20,000 L.S.
Panel with service (480 V, 1,200 Amp)	$10,000 L.S.
Power Monthly Cost	$200/Mo

Liability insurance at the rate of .55% to be added to the above costs.

These unit costs are quoted for mobilization work only, and are valid for work through August 15, 1991.

CITY FRONT TERRACE
K.C. JOB #1201
GENERAL CONDITIONS - UNIT RATES
THRU AUGUST 15, 1991

EXHIBIT 'B'

Supervision	
Jack Filer, Sr. Project Manager	$44/Hr or $1,760/Wk
Mark Wolford, Project Manager	$42/Hr or $1,680/Wk
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Marty Breen, Project Manager	$37/Hr or $$1,480/Wk
Bob Wilson, Pre-Construction Estimator	$42/Hr or $1,680/Wk
Secretarial/Accounting	$18/Hr
Car Allowance	In above numbers
Insurance/Benefits	33% on above numbers
Miscellaneous Carpenter	$40/Hr
Temporary	
Trailer	$50/Wk
Trailer Furniture	$25/Wk
Extinguishers	$20/Wk
Temp Fence	Covered in Demolition Contract thru Oct. 1st
Toilets	$75/Mo
Project Sign	$500 L.S.
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Phone Installation	$400 L.S.
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Panel with service (480 V, 1,200 Amp)	$10,000 L.S.
Power Monthly Cost	$200/Mo

Liability insurance at the rate of .55% to be added to the above costs.

These unit costs are quoted for mobilization work only, and are valid for work through August 15, 1991.

CERTIFICATE OF INSURANCE

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NEW OCCURRENCE FORM

DATE

PRODUCER

INSURANCE AGENT
ADDRESS
CITY, STATE ZIP

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A	NAME OF INSURANCE COMPANY
COMPANY LETTER B	NAME OF INSURANCE COMPANY
COMPANY LETTER C	NAME OF INSURANCE COMPANY
COMPANY LETTER D	NAME OF INSURANCE COMPANY
COMPANY LETTER E	

INSURED

SUBCONTRACTOR
ADDRESS
CITY, STATE ZIP

COVERAGES

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	ALL LIMITS IN THOUSANDS
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE / OCCURRENCE X OWNER'S & CONTRACTOR'S PROTECTIVE X BLANKET CONTRACTUAL X [illegible]	POLICY NUMBER	DATE	DATE	GENERAL AGGREGATE $1,000 PRODUCTS-COMP/OPS AGGREGATE $1,000 PERSONAL & ADVERTISING INJURY $1,000 EACH OCCURRENCE $1,000 FIRE DAMAGE (ANY ONE FIRE) $ MEDICAL EXPENSE (ANY ONE PERSON) $
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS GARAGE LIABILITY	POLICY NUMBER	DATE	DATE	$ 1,000. $ $ $
C	EXCESS LIABILITY X UMBRELLA FORM OTHER THAN UMBRELLA FORM	POLICY NUMBER	DATE	DATE	EACH OCCURRENCE $ 5,000. AGGREGATE $ 5,000.
D	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	POLICY NUMBER	DATE	DATE	STATUTORY $ 500 EACH ACCIDENT $ 500 DISEASE POLICY LIMIT $ 500 DISEASE EACH EMPLOYEE
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

GENERAL LIABILITY - "ALL OPERATIONS"; CERTIFICATE HOLDER & OWNER ARE ADDITIONAL INSUREDS ON PRIMARY & NON-CONTRIBUTORY BASIS.
WORKERS COMPENSATION - WAIVER OF SUBROGATION AGAINST CERTIFICATE HOLDER & OWNER.

CERTIFICATE HOLDER

CONTRACTOR
ADDRESS
CITY, STATE ZIP

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

SIGNATURE

Exhibit "C"

Exhibit A

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EXHIBIT B

CONSTRUCTION SCHEDULE

Refer to Construction Schedule
Prepared By Contractor
Dated August 12, 1991

EXHIBIT B

Exhibit A
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Exhibit "C"
CityFront Terrace
Salary and Benefits Schedule
August 15, 1991

Personnel	Salary/Hour Range
Operations Manager/General Superintendent	$50 to $62/hour
Senior Project Manager	$42 to $50/hour
Project Manager	$37 to $44/hour
Project Engineer/Scheduler	$25 to $39/hour
Project Superintendent	$42 to $50/hour
Assistant Superintendent	$37 to $44/hour
Secretarial/Administrative/Accounting	$18 to $24/hour

The above ranges include automobile allowances as required and are intended to accommodate reasonable C.P.I. increases over the presently scheduled duration of the project. A discretionary bonus of up to 15% of each individual's base pay is provided annually and is in addition to the above salary ranges.

The base pay is subject to a 33% labor burden in addition to the salaries quoted above. Such labor burden includes the following benefit items:

- Federal Insurance Contribution Act (FICA)
- Federal Unemployment Insurance (FUI)
- State Unemployment Insurance (SUI)
- Employee Vacation
- Employee Holidays
- Health Insurance
- Dental Insurance
- Workman's Compensation
- Sick Pay
- 401(k) Retirement Plan

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EXHIBIT D

SUBCONTRACTOR FORMS

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Koll Construction

SUBCONTRACT AGREEMENT

Insurance Needed

OK

Job Name:

Title of Work:

KC Vendor Number: ____________

KC Subcontract Number: ____________

THIS AGREEMENT, hereinafter called the Subcontract, made this day of , 19 by and between hereinafter called the Subcontractor, and KOLL CONSTRUCTION, hereinafter called the Contractor.

WITNESSETH:

That the Subcontractor and the Contractor for the considerations hereinafter named agree as follows:

A. The Subcontractor agrees to furnish all labor, material, supplies, equipment, services, machinery, hoisting equipment, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein ("Work") in connection with the construction of the

("Project") in accordance with the Contract Documents (as defined in the General Terms) and the General Terms hereof, Forms K-100B through K-100_ dated ________ attached hereto, all of which shall become a part of this Subcontract and all of which the Subcontractor hereby certifies he has read and knows the contents thereof.

B. The Subcontractor's work shall include, but not necessarily be limited to:

C. Subcontractor ____________ furnish a subcontract bond in accordance with Article 23 of the General Terms.

D. The prime contract contains a liquidated damages clause in the amount of $____________ per day for which the Subcontractor shall be liable as provided in Article 9 of the General Terms.

E. In consideration of the faithful performance by the Subcontractor of all the terms, conditions and requirements of this Subcontract, the Contractor agrees to pay the Subcontractor the sum of ($) in current funds subject to additions and deductions for changes as may be agreed upon, from funds received from the Owner. All payments shall be in accordance with and subject to the provisions of the General Terms incorporated herein. (See paragraph 28.)

F. In compliance with Federal and State Regulations, the following subcontractor information is required:

Subcontractor operates as a ____________ (Sole Prop., Partnership, Corporation)

Federal Tax I.D. No. ____________

State Contractors License No. ____________

G. Subject to the provisions of paragraph 12 (b) hereof, it is agreed that the venue and forum of any litigation or arbitration proceeding under this Subcontract shall be in the County of ____________.

I have read the above information and hereby certify that to the best of my knowledge it is complete and accurate.

TKCC, Inc. A California corporation
dba: KOLL CONSTRUCTION

By: ____________

Title:

Contractor State License No.:

Address:

Telephone:

Subcontractor:

By: ____________

Title: ____________

Address:

Telephone:

Remittance Address if difference than above.

K-100A

EXHIBIT D

Exhibit A

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Koll Construction
GENERAL TERMS

1. INSURANCE. Before Subcontractor does any work at or prepares or delivers material to the site of construction, the Subcontractor shall provide to the Contractor Certificates of Insurance evidencing coverage acceptable to Contractor in amounts either as required by the specifications or as follows, whichever is greater:

(a) Worker's Compensation: As required by the laws of the state in which their work is to be performed, including a Waiver of Subrogation endorsement in favor of the Owner and the Contractor.

(b) General Liability: Comprehensive General Liability on an occurrence form (Claims Made coverage not acceptable) insuring personal injury and property damage against the hazards of Premises and Operations, Products, and Completed Operations, Independent Contractor's and Contractual Liability (specifically covering the Hold Harmless Agreement set forth in Section (e) of this Article 1) and the following minimum limits of liability:

Personal Injury and Property Damage	$1,000,000 each occurrence and $1,000,000 aggregate

(c) Hazardous Operations: When the work of this Subcontractor involves any subsurface activities, the Subcontractor shall provide liability coverage for explosion, collapse, and underground hazards (XCU) with the minimum limits listed above. Other hazardous operations, as determined by the Contractor may require other coverage and/or higher limits of liability.

(d) Automobile Liability: Comprehensive Automobile Liability having owned, hired, and non-owned automobiles with the minimum limits of $1,000,000 combined.

(e) Hold Harmless Agreement: Subcontractor shall assume liability and indemnify the Contractor and Owner, from and against any liability and all loss, costs, damages, expenses, including attorney's fees, on account of claims for personal injury, including death, sustained by any person or persons whomsoever, including employees of Subcontractor, and for injury to or destruction of property of the person or organization, including loss of use thereof, arising out of the performance of the work under this Subcontract, excepting only such matters caused solely and exclusively by the active negligence or the willful misconduct of the Contractor.

The Subcontractor's insurance afforded under (b) and (c) above shall include the Contractor and Owner as Additional Insureds. Additionally, the following clause is to be added: "The insurance afforded to the Additional Insureds is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy cannot be reduced by the existence of such other insurance."

The Certificate evidencing the above required coverages shall provide that such coverage not be cancelled or reduced except by written notice to the Contractor and Owner at least thirty (30) days prior to the effective date of such cancellation or material reduction in coverage. New or renewal Certificates shall evidence all of the above required coverages.

2. SUBCONTRACT DOCUMENTS:

(a) The terms "Contract" and "Prime Contract" as may be used herein refer to the Contract between the Owner and Contractor for construction of the Project.

(b) The term "Contract Documents" as used herein refers to the "Contract" between the Owner and the Contractor, together with all Drawings, Specifications, General Conditions, Supplemental General Conditions, Special Conditions, Addenda, Amendments and all other instruments issued by or on behalf of the Owner and/or prepared by the Architect for the Project, together with all other documents or instruments referred to in the aforesaid "Contract" and "Contract Documents."

(c) The term "Subcontract" as used herein refers to this Subcontract together with any exhibits, attachments or addenda, including without limitation all of the General Terms incorporated herewith and referred to herein.

(d) The term "Subcontract Documents" as used herein refers to the "Contract", "Contract Documents", and "Subcontract"

(e) In the event of a conflict between any of the Subcontract Documents, the documents shall take precedence in the following order and the one taking precedence controls over the one(s) following:

(i) The Contract, together with all Change Orders, modifications and exhibits;

(ii) The Contract Documents in the order listed in the Contract;

(iii) The Subcontract, together with all Change Orders and exhibits; provided, however, the Subcontract shall control when the provisions of the Subcontract require stricter performance by the Subcontractor.

(f) Subcontractor specifically agrees to perform in accordance with the provisions of the "Contract Documents", provided, however, nothing in the Contract Documents shall be construed to limit any and all actual damages that may be incurred by Contractor and recovered by Contractor from Subcontractor as a result of any default by Subcontractor. Subcontractor agrees that he has read the "Contract Documents" and copies were made available for Subcontractor and Subcontractor agrees and acknowledges that he shall similarly make copies of such Documents available to his Sub-Subcontractors, if any, and that all such Sub-Subcontractors will agree to be bound by the Contract Documents and the Subcontract Documents.

3. WORKMANSHIP

(a) Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all material and equipment used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided for in the Contract Documents to be otherwise.

(b) If in the execution or performance of this Subcontract, the Subcontractor shall fail to perform the Work in accordance with the terms, conditions, provisions or covenants of the Subcontract Documents, or shall have performed any of the Work carelessly or negligently, and/or shall have violated any laws, rules, orders, regulations or ordinances applicable to the Subcontractor's Work hereunder, then the Subcontractor shall fully indemnify and hold the Contractor harmless from any and all actions, damages, liabilities, claims and expenses, including without limitation attorneys' fees asserted against and/or paid or incurred by the Contractor, as a result of any such failures, negligence, carelessness, or violations committed by the Subcontractor in the execution or performance of the Work hereunder.

4. SATISFACTORY EMPLOYEES. The Subcontractor shall employ labor satisfactory to the Contractor. Subcontractor shall remove or cause to have removed from the project any employee or employees who are considered unsatisfactory by the Contractor.

The Subcontractor at all times during the progress of the work outlined in this Contract shall have a representative at the job site who is authorized to receive orders, to make decisions regarding the work to be performed, and be responsible for the total scope of work included in this Subcontract.

Subcontractor warrants that, with respect to carpentry, cement mason, teamster, ironworker, operating engineer and laborer work, as such work is defined in the appropriate AFL-CIO or Teamster Master Labor Agreement, to be done at the site of construction, alterations, painting or repair of a building, structure or other work, Subcontractor and Subcontractor's subcontractors of every tier, have and will continue to have for the duration of this Agreement, a valid, appropriate and current labor agreement with the appropriate union, or subordinate body, affiliated with the Building and Construction Trades Department, AFL-CIO, or with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or an affiliate thereof. It is agreed that all such work performed by Subcontractor and Subcontractor's subcontractors of every tier shall be rendered in accordance with the terms and conditions of said labor agreements. Any breach by Subcontractor or Subcontractor's subcontractors of every tier of such labor agreement shall constitute a breach of this Subcontract.

5. PROVISIONS FOR INSPECTION AND AUDIT. Subcontractor shall furnish to Contractor and its representatives ample facilities at all reasonable times for inspecting materials at the site of construction, at the shops or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. Subcontractor shall further furnish to Contractor as often as required, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation of manufacture, said reports to show the progress of such preparation and manufacture in such detail as may be required by Contractor, including any plans, drawings, or diagrams in course of preparation. The Contractor shall be afforded access to all the Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Subcontract, and the Subcontractor shall preserve all such records for a period of three years, or for such longer period as may be required by law, after the final payment. Subcontractor agrees that Contractor, its agents or representatives of any union with which Subcontractor has a collective bargaining agreement or with which Contractor has a collective bargaining agreement affecting or covering all or some portion of Subcontractor's Work shall have the right at any reasonable hour to inspect, copy or audit the books and records of the Subcontractor as they may pertain to the Subcontractor's payment of all required benefits to such unions or union trusts pertaining to the Subcontractor's Work on the Project. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not exercise its right to inspect, copy or audit the books and records of the Subcontractor until such time as Contractor determines in its reasonable judgement that there may be a discrepancy in the recordkeeping of the Subcontractor or that a dispute has arisen that may be resolved by Contractor's inspection of such books.

6. INDEMNIFICATION FROM PATENT RIGHTS. Subcontractor shall indemnify and hold Contractor harmless against any claim, suit or action, or any alleged violation or infringement or patent rights which may be made against Contractor by reason of the use in connection with or as a part of the performance of the work or the furnishing of the materials hereunder, of anything which is now or may hereafter be covered by patent, copyright or trademark, and also against all expense, including attorneys' fees, which Contractor may incur in defending or adjusting any such claim, suit or action.

7. TIME. Time is the essence of this Agreement. Subcontractor agrees to punctually and diligently perform all parts of his work at the time scheduled by the Contractor, which shall be subject to change by the Contractor as deemed necessary or convenient to the overall progress of the Project. In this connection, Subcontractor agrees that he will keep himself continually informed of the progress of the job and will, upon his own initiative, confer with the Contractor so as to plan his work in coordinated sequence with the work of the Contractor and of others and so as to be able to expeditiously undertake and perform his work at the time most beneficial to the entire Project. However, he shall not proceed with any phase of his work ahead of the time designated by the Contractor.

Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples and do all other things necessary and incidental to the prosecution of his work in conformance with the said progress schedule. He shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors and of the Contractor in a manner that will facilitate the efficient completion of the entire work. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of Subcontractors on the premises. If the Project is divided into parts, Subcontractor will perform several or all parts simultaneously, if required by Contractor.

Koll Construction

GENERAL TERMS (Continued)

If the Subcontractor be not in default in any of the provisions hereof, and in order to expedite the final completion of the building, or general or special work thereon, the Contractor directs the Subcontractor to work overtime for a second shift, it is agreed that the Subcontractor shall work said overtime, (or shift), and it is understood that the Contractor is to pay only the actual extra cost over the rate for regular time of said overtime. Time slips covering said overtime must be checked and approved daily by the Contractor's authorized agent at the building. No overhead or profit is to be charged by the Subcontractor for said overtime.

If the Subcontractor is behind in the work hereunder, fails or refuses to supply sufficient workmen, or to deliver materials or equipment on schedule, and delays progress of the work, or if the different parts thereof are not commenced, performed, finished and delivered on time, the Contractor shall have the right to direct the Subcontractor to furnish additional labor and expedite deliveries of material and equipment at Subcontractor's cost and expense. If such additional labor is not available, the Contractor has the right to require Subcontractor at the latter's cost, to work overtime or additional shifts and/or weekends and holidays, to such an extent as will be sufficient to speed up and complete his work on schedule.

8. RECOURSE BY CONTRACTOR. In the event that Subcontractor at any time refuses or neglects to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials of proper quality, or in effect be adjudicated a bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors without Contractor's consent, or fails to make prompt payment to his materialmen and laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or otherwise fails to perform fully any and all of the covenants and obligations herein contained, Contractor may, at his option, after giving twenty-four (24) hours written notice to the Subcontractor, provide any such labor and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor under this Agreement; or Contractor may, at his option, terminate the Subcontractor's right to proceed with the work, and, in that event, Contractor shall have the right to enter upon the premises of the Project or the Subcontractor's warehouse and take possession, for the purpose of completing the work included under this Agreement, of all materials, tools, and appliances thereon, and may employ any other person or persons to finish the work and provide the materials therefor. In case of such discontinuance of the Subcontractor's right to proceed with the work, said Subcontractor shall not be entitled to receive any further payment under this Agreement until the work undertaken by the Contractor in his prime Contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by the Contractor in finishing the Subcontractor's work, such excess shall be paid by the Contractor to the Subcontractor, but, if such expense shall exceed such unpaid balance, then the Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds such unpaid balance. The expense incurred by the Contractor as herein provided, either for furnishing materials or for finishing the work, and any damages incurred by Contractor by reason of Subcontractor's default, shall be chargeable to, and paid by Subcontractor, and Contractor shall have a lien upon all materials, tools and appliances, taken possession of, as aforesaid, to secure the payment thereof. If Contractor elects not to terminate Subcontractor's right to proceed, Subcontractor agrees to reimburse Contractor, or other Subcontractors, for losses or damages resulting from the delay to speedy progress of work.

9. DAMAGES CAUSED BY DELAYS. The prime contract contains a liquidated damages clause in the amount shown in Paragraph D on page 1. Should the subcontractor default in the proper performance of his work thereby causing delay in the entire work, he shall be liable for any and all loss and damages including but not limited to liquidated damages sustained therefor by the Contractor. The Subcontractor shall be liable under this paragraph even though such default is caused by strikes, lockouts, acts of God, or other reasons beyond the control of Subcontractor, unless the Subcontractor gives written notice of the delay to Contractor within 4 days following the start of the alleged occurrence. Contractor shall not be liable to Subcontractor for loss or damages resulting from the aforementioned causes, or for Contractor's delay, or for modification or extension of the schedule made at the sole discretion of Contractor, or for losses or damages resulting from Hold or Change Orders issued by Owner, or for delays caused by other Subcontractors.

10. TERMINATION OF AGREEMENT. Contractor reserves the right to terminate this Agreement in the event that the General Contract is terminated by Owner or the Project is substantially destroyed by fire or other catastrophe. In the event of such termination, Subcontractor shall be entitled only to payment in the lesser amount of either:

(a) Cost of the work actually completed plus 15% of cost of the work actually completed for field supervision, overhead and profit.

(b) A percentage of this Subcontract amount which reflects the value of work actually completed in proportion to the Subcontract amount.

There shall be deducted from such sums as provided in this paragraph the amount of any payments made to Subcontractor prior to the date of termination of this Subcontract. Subcontractor shall not be entitled to any claim, or claim of lien against Contractor or against Owner for any additional compensation or damages in the event of such termination. This Agreement shall become null and void and of no effect in the event the Contractor shall not be awarded the General Contract or if for any reason beyond its control Contractor shall be unable to undertake performance of said General Contract or if the Architect or Owner objects to Subcontractor.

11. LIENS. Subcontractor shall at all times indemnify and save Contractor and Owner harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including any costs and expenses for attorney's fees, premiums for Bonds required by title company or Owner, and all incidental or consequential damages resulting to Contractor or Owner from such claims. Further, in case suit on such claim is brought, Subcontractor shall defend said suit at his own cost and expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand, to cause the effect of any suit or lien to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien to be removed or dismissed and the cost thereof, together with reasonable attorneys fees shall be [illegible] and payable to Contractor by Subcontractor. Subcontractor may [illegible] lien or suit above described provided he causes the effect thereof [illegible] removed promptly, in advance, from the premises above mentioned, [illegible] further do such things as may be necessary to cause Owner not to [illegible] any monies due to Contractor from Owner by reason of such liens. Notwithstanding anything to the contrary set forth above in this par[agraph] Subcontractor shall not be construed to be foregoing its lien right [in the] event of a dispute over payments due for services rendered and [materials] furnished to the Project.

12. DISPUTES.

(a) Contractor-Subcontractor Disputes. All claims, dispute[s and] other matters in question arising out of, or relating to, this [Con]tract, or the breach thereof (not exceeding the accumulative [sum] of $50,000) shall be settled by arbitration in accordance [with the] Construction Industry Arbitration Rules of the American Arb[itration] Association then obtaining, provided, that any award must be [based] upon the terms hereof and the rules of law applicable to the such disputes. This agreement so to arbitrate shall be spec[ifically] enforceable under the prevailing arbitration law. The partie[s, how]ever, reserve the right to conduct discovery under the Code [of Civil] Procedure with regard to any claim filed, and irrespective [of the] Construction Industry Arbitration Rules of the American Arb[itration] Association and/or prevailing statutory law. The award rend[ered by] the arbitrators shall set forth their findings of the facts and [shall be] final and binding, and the judgment may be entered upon it [in any] court having jurisdiction thereof. Under no circumstances [shall the] arbitrator or arbitrators have any power, jurisdiction, or auth[ority to] award punitive or exemplary damages to any party.

(b) Owner Involved Disputes. In the event that any claim shall b[e made] by the Owner against the Contractor that any part of the wo[rk per]formed by Subcontractor hereunder is defective or fails to [comply] with the plans and specifications, Subcontractor shall perfo[rm all] work necessary to correct defective work or work not in com[pliance] with the Contract Documents to the satisfaction of Owner, in[cluding] repairs to the work of other trades damaged by the rework [of Sub]contractor, and if Subcontractor disputes the claim of the [Owner,] Subcontractor shall notify Contractor that Subcontractor is [perfor]ming work under protest, and submit to Contractor a dema[nd for] compensation for extra work which Contractor will submit [to] Owner. In the event that the Owner shall dispute any charge[s made] to him by the Contractor to cover Subcontractor's demand f[or time] and compensation for extra work or any item of expense not [includ]ed in the Subcontract price (in the opinion of the Subcontractor), [Sub]contractor agrees that he will assume the burden of prosecu[ting such] claim in the Contractor's name against the Owner.

Notwithstanding any contrary provision above concerning ven[ue or] forum, if any dispute between Owner and Contractor shall be subm[itted to] arbitration or litigation, the Contractor may, by written notice to Subcon[tractor] before the actual commencement of any such arbitration hearing or t[rial be]tween or involving Owner and Contractor, require that the question [of the] responsibility of the Subcontractor and/or of the rights and obligati[ons of] the Contractor and Subcontractor with respect to one another, and [any] disputes, pending or otherwise, between Contractor and Subcontractor [whether] or not in arbitration, be submitted likewise, before the same tribunal and [deter]mined collaterally to the decision upon the dispute between Contracto[r and] the Owner to the end that the entire controversy shall be resolved at [once.] In such an event, Subcontractor agrees to fully cooperate and not to in[terfere] with the rights and election of Contractor hereunder. The decision of [the ar]bitration or litigation shall be final and in the case of arbitration, may be [entered] as a judgment by any court of competent jurisdiction.

13. CHANGES IN THE WORK. The Subcontractor hereby agrees, [without] nullifying the original Contract, to make any and all changes or devi[ations] from and additions to the original plans and specifications, when speci[fically] ordered by the Contractor to do so in writing. Furthermore, the Subco[ntrac]tor, prior to commencement of revised work, shall submit within [illegible] the Contractor written copies of his firm's cost or credit proposal fo[r the] revised work. Subcontractor will support all claims for Changes with [de]tailed breakdown showing differences in quality, and value of labor and m[aterials] involved.

The time of completion will remain fixed, unless expressly otherwise [agreed] to in a Change Order. If the time is extended, all added costs for same [must] be included in the original claim for the Changes, otherwise such added [costs] will not be subject to reimbursement.

Should the Contractor elect to have any extra work performed on [a time] and material basis, in lieu of unit prices or a negotiated lump sum, [and] notifies the Subcontractor in writing, the Subcontractor will perform the [work] at his actual net cost plus overhead and profit with or without a max[imum] guarantee total cost set up at the Contractor's option. The Subcontra[ctor's] markup for overhead and profit will not exceed 15% (including field su[pervi]sion, tools and plant) unless agreed to by the Contractor in advance [of] commencement of work.

Charges for time and material must be supported by records [check]ed and approved daily by Contractor's superintendent. Subcontractor will permi[t Con]tractor to audit its books, records, estimates, orders and files as necess[ary to] check and verify charges and credits involved.

The Subcontractor shall adhere strictly to the plans and specific[ations] unless a change therefrom is authorized in writing. In such case [the cost] of said change shall be understood and agreed upon in writing by the [Con]tractor and Subcontractor before commencement of said revised [or addi]tional work or deviation from the plans and specifications performed [without] written authorization will not be subject to reimbursement. [illegible] indicated or necessary to complete the project shall be promptly perf[ormed] as ordered by the Contractor and the proper cost or credit breakdown [thereof] shall be submitted, immediately thereafter, to the Contractor for [illegible]

14. ASSIGNMENT OF CONTRACT. Subcontractor shall not, without [the] prior written consent of Contractor, which consent can be withheld [at] Contractor's sole discretion, assign, transfer, or sublet any part [or all] of Subcontractor's work, nor assign any payments to others, [and shall furnish] all labor, materials, and equipment necessary for the performance [of this] Agreement. Should Subcontractor wish to assign, transfer [illegible]

Exhibit A

tively "assign") any portion of Subcontractor's work, his request must be made in Contractor in writing. Subcontractor's request to assign shall include the submittal by Subcontractor of (i) the proposed assignee's qualifications (financial and experience), (ii) the written contract between the Subcontractor and Assignee and (iii) a certificate of insurance naming Owner and Contractor as "Additional Insureds" and evidencing the same coverage identified in Article I. Contractor may assign or transfer the whole or any part of this Agreement, its rights hereunder, to any corporation, individual, or partnership which it may designate.

15. ACCEPTANCE OF WORK PERFORMED BY OTHERS. The Subcontractor shall carefully inspect and approve the work performed by others that is to receive, align, abut or similarly relate to the work of this Subcontract. If the Subcontractor finds the work performed by others to be unacceptable, he shall notify the Contractor in writing. If the Subcontractor commences the work of this subcontract, such commencement shall constitute acceptance of the work performed by others.

16. PROTECTION OF SUBCONTRACTOR'S OWN WORK. The Subcontractor shall effectually secure and protect the work to be done hereunder and assume full responsibility for the condition thereof until final acceptance by Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the workmen of the General Contractor, and other subcontractors directly from his operation and from the results therefor.

17. RESPONSIBILITY FOR DAMAGES TO WORK IN PLACE. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on job site caused by him or his agents, employees or guests. The Subcontractor shall be entirely responsible for any loss (including theft) or damage done to his work, materials, tools, equipment and other appliances in any manner aforementioned even though the particular work damaged may be finished at that time and the Subcontractor may be working in some other portion of the premises.

18. LAYOUT RESPONSIBILITY. The Contractor shall establish principal axis lines and levels whereupon the Subcontractor shall lay out and shall be strictly responsible for the accuracy of his work and for any loss or damage to other contractors engaged in work on the site by reason of failure of the undersigned Subcontractor to set out or perform his work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

19. CLEAN-UP. At all times during the course of construction, the Subcontractor shall maintain the premises in a clean, safe and orderly condition. Rubbish, waste material and surplus material will be collected or removed daily, or less frequently, as the Contractor may require. Upon completion of the work under this agreement, the Subcontractor shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If the Subcontractor fails to perform a clean-up function within twenty-four (24) hours after notification by the Contractor to do so, the Contractor may proceed with that function as he adjudges necessary and in the manner he may deem expedient, with the understanding the cost thereof shall be charged to the Subcontractor and deducted from monies due under this Agreement. Notification to Subcontractor's Foreman or Superintendent will be considered proper notice.

20. USE OF CONTRACTOR'S EQUIPMENT, LABOR, ETC. In the event Subcontractor shall use Contractor's equipment, labor, facilities, hoists, elevators, utilities, power, light, water, ladders, scaffolding, etc., he shall reimburse Contractor to a predetermined rate, unless otherwise stated herein. Further, that in so doing, Subcontractor assumes all responsibility for, and shall hold Contractor harmless from any claims, actions, demands, damages, liabilities, or expenses, including legal fees, resulting from the use of same by said Subcontractor or his agents, employees, or permittees, including injuries caused by unsafe conditions, whether caused by negligence of Contractor, his Agents, Employees, or otherwise.

Contractor shall have the right to utilize the Subcontractor's facilities, equipment or scaffolding at no additional cost thereto. If the Subcontractor is directed to supply facilities of greater capacity, or for a longer duration than required for the work hereunder, the Contractor will pay its proportionate share of the costs, such proportions to be fixed by the Contractor.

21. GUARANTEE. Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee Form, will guarantee all materials and workmanship and agrees to replace at his sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, losses or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, Subcontractor shall be bound as specified. All guarantees will inure to the benefit of the Contractor, Owner, their successors or assigns, including equipment warranties.

(a) Additional terms applicable to Roofing, Sheetmetal, Caulking and/or Waterproofing Subcontracts: Subcontractor agrees to maintain roofing, waterproofing, gravelstops, flashings and counter flashings in a watertight condition for the number of years specified in the Contract Documents and in any case not less than 2 years. If the waterproofing or roof leaks, the Subcontractor agrees to make the necessary permanent repairs immediately to produce a watertight condition and agrees to reimburse the Contractor for any costs required to repair water damage to the walls, ceilings, fixtures, furnishings, paintings or decorating, etc., caused by the leaks. Subcontractor will remove and replace any work necessary to gain access to the roofing or waterproofing membranes being maintained hereunder.

(b) Additional terms applicable to Plumbing, Heating, Air Conditioning, Electrical, Fire Sprinkler or Process Piping Subcontracts: Subcontractor shall be responsible for all damages to the building, furnishings and all improvements included in the General Contract caused by leaks in the piping or conduit systems installed hereunder, or due to leaks where pipes or conduit go through walls or slabs where the joints around such pipes or conduits are to be watertight. The Subcontractor shall repair at his expense all damage so caused or will reimburse the Contractor for any costs required to repair water damage to the walls, ceilings, fixtures, furnishings, paintings or etc., caused by such leaks.

(c) Additional terms applicable to Glass and Glazing, Curtain Wall, or Store Front Subcontracts. Subcontractor … sible for all damages to the building and furnishings, an[d im]provements, caused by leaks through, under or around … Subcontractor will remove and replace any work as requ[ired for] access to sources of leakage to be corrected hereunder.

22. JURISDICTIONAL DISPUTES.

(a) The Subcontractor accepts and agrees to be bound by the … rules and regulations and decisions of the appropriate … specified in the appropriate labor agreements for the … jurisdictional disputes and will immediately comply with … tions of said tribunals, which affect the performance of wo[rk] … by the Subcontract. Subcontractor agrees to bind, by … tract, all of his subcontractors of every tier to said procec[dures] and regulations and decisions of said tribunals in the sam[e manner] and to the same effect as provided herein with … Subcontractor.

(b) During the performance of the Subcontractor's Work, … contractor, its employees, Sub-Subcontractors and supplie[rs …] such entrance or entrances to the job site as may be design[ated from] time to time by the Contractor.

23. BONDING OF SUBCONTRACTOR. If Paragraph C of this [Subcon]tract Agreement requires the Subcontractor to furnish a Subcontr[act Bond,] the Subcontractor shall, within 10 calendar days of the executi[on of this] Agreement, furnish such Subcontract Bond on Contractor's Bond F[orm, with] a surety acceptable to the Contractor. The bond premium will be pa[id by the] Subcontractor and is included in the Subcontract amount and any … in the bond premium resulting from changes in the amount of the Sub[contract] shall be paid by the Subcontractor and included in the amount … Subcontract change order. The subcontractor will not proceed with … until the Subcontract Bond is received and approved by the Contr[actor].

24. MATERIALS FURNISHED BY OTHERS. In the event the subco[ntract] includes installation of materials or equipment furnished by others, … be the responsibility of the Subcontractor to examine the items so … and thereupon handle, store and install the items with such skill an[d care] to insure a satisfactory installation. Loss or damage due to acts of … contractor shall be charged to the account of the Subcontractor and … from monies due under this Agreement.

25. SUBCONTRACTOR AS AN INDEPENDENT CONTRA[CTOR]. Subcontractor is an independent contractor and shall, at his sole cos[t and ex]pense, and without increase in the Contract Price, comply with all law[s,] ordinances, and regulations of all governing bodies having jurisdict[ion over] the work; obtain all necessary permits and licenses therefor; pay for … from to sewer, flood control outfall, water or fire lines, electric, gas, … utility systems or assessments applicable thereto; all manufacturer's … taxes, use taxes, processing taxes, and all federal and state taxes, … and contributions for Social Security and Unemployment which are … by wages, salaries, or other remunerations paid to Subcontractor's em[ployees] whether levied under existing or subsequently enacted laws, rules, or … tions. Subcontractor upon request, shall furnish evidence satisfactory … tractor that any or all of the foregoing obligations have been fulfil[led].

No certificate given or payment made under this Agreement, ex[cept the] final certificate or final payment, shall be conclusive evidence of the [perfor]mance of this Contract, either wholly or in part, and no payment shal[l be con]strued to be an acceptance of defective work or improper materials. … [illegible] all the conditions affecting the work to be done and materials to be … to be, and has by his own investigation and research … [illegible] Owner, Architect, or Contractor, either before or after the execution … hereof, shall affect or modify any of the terms or obligations con[tained] herein.

The Subcontractor shall promptly notify the respective departm[ents and] official bodies when its work is ready for inspection and shall, at … all work required to remove any violations or to comply with such inspe[ctions] without additional charge to Contractor. The Subcontractor shall perf[orm all] work necessary to obtain approvals from the authorities mentioned … without additional cost to the Contractor.

26. SIGNS. Subcontractor will not place any temporary or permanent [signs] on any portion of the building, the property or fences except upon prio[r writ]ten authorization of Contractor.

27. TOOL SHEDS & BOXES. The Subcontractor will provide, loca[te,] relocate, and maintain adequate sheds and/or tool boxes as designated by Con[tractor]. Contractor will not be responsible for any clothing, tools, ma[terials] or equipment lost, damaged, stolen or destroyed.

28. PAYMENTS

(a) It is agreed that progress payments to the Subcontractor … made with funds received by the Contractor from the Owner for … performed by the Subcontractor as reflected in the … Application for Payment and only when and if such funds are rec[eived] by the Contractor from the Owner.

Approval of the Contractor's Application for Payment and pay[ment] for the work reflected therein shall be a condition precedent … must occur before the Contractor will be obligated to pay the … contractor. If, and only if, Contractor receives such a payment … Owner and Subcontractor complies with Paragraphs … below, then Contractor agrees to pay Subcontractor the … sum on or about the 10th day of the month following the month …

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GENERAL TERMS (Continued)

which the work was performed, provided however, the Contractor may retain as part security for Subcontractor's fulfillment of this Contract, an amount equal to ten percent (10%) of the value of the work completed by Subcontractor as determined by the Contractor and/or Owner for the purpose of subcontract progress payment. Final payment shall only be made to Subcontractor from sums received by Contractor as final payment from Owner, subject to the provisions of Paragraph (b), (c), and (d) below. Final payment to the Contractor by the Owner shall be a condition precedent which must occur before the contractor will be obligated to make final payment to the Subcontractor.

(b) The Subcontractor shall prepare and present to the Contractor, for its approval, on or before the last day of each calendar month an invoice using Contractor's form K-112 showing the amount due. Each such invoice shall contain the following:

1. A statement of the current subcontract sum including approved change orders.
2. The percentage of completion of the current subcontract sum.
3. Less retention applicable.
4. Total amount due.
5. Less previous payments.
6. The net amount due for the current period.

Contractor is not required to make any payment to Subcontractor unless Subcontractor shall previously have provided releases executed by all persons who might have mechanic's lien, stop notice or labor and material bond rights against the project and arising out of work performed under the Subcontract, using Contractor's forms K-113 or K-114 along with evidence of payment as applicable to all unions and union trust funds. In the event Subcontractor provides a conditional release on form K-113 from any of those persons identified above, Contractor will prepare and issue a joint check for the amount as indicated in such conditional release. As a condition precedent to final payment, Contractor requires Subcontractor to provide a full and final release from those materialmen and subcontractors claiming through him.

(c) The Contractor may withhold monthly progress payments, in whole or in part, in order to protect the Contractor and/or Owner from loss because of:

1. Defective work not remedied, missing materials not furnished, clean-up not performed;
2. Claims filed or reasonable evidence indicating probable filing of claims, including claims covered by insurance until such claims are accepted by carrier;
3. Failure of Subcontractor to make payments properly to his Subcontractors, or for labor, materials or equipment, transportation or shipping costs, taxes, fees or other claims growing out of the work;
4. Reasonable doubt that the work can be completed for the unpaid balance of the contract sum;
5. Damage to another Subcontractor, and/or Contractor;
6. Reasonable indication that the work will not be completed on schedule or within the contract time;
7. Unsatisfactory prosecution of the work by the Subcontractor;
8. Failure to deliver "as built" drawings, written guarantees or warranties; or
9. Failure to obtain the approvals required by any authority having jurisdiction.
10. Work performed at the site of construction by Subcontractor, its subcontractor(s) or the employees of either of them prior to providing Contractor with the following which must be acceptable to Contractor: (A) Certificates of Insurance; and (B) Subcontract Bond, when required.

When the above grounds are removed by Subcontractor, payment shall be made for the amounts withheld because of them. Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (c) 2 and 3 above, and/or supporting invoices, receipts or other records to substantiate the amounts owing or paid as Contractor may require.

No progress payment, nor any partial or entire use, or occupancy of the project by the Owner, shall constitute an acceptance of any work not in accordance with the Subcontract.

(d) The balance owing to the Subcontractor under the terms of this Agreement shall be due and payable thirty-five (35) days after completion and acceptance of the project, and the removal of all grounds for withholding, enumerated under 28 (c) above, and satisfactory proof that all claims, including taxes, growing out of the work hereunder (and any liens related thereto) have been released.

(e) Any and all funds payable to the Subcontractor hereunder are hereby declared to constitute trust funds in the hands of the Subcontractor, to be applied first to the payment of claims of his subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described work, to claims for utilities furnished and taxes imposed; and to the payment of premiums on surety bonds and other bonds filed and premiums on insurance accruing during the construction of the described work, before application to any other purpose.

29. RISING COSTS. The Contractor agrees to pay the sum herein set forth in current funds for such work and materials, and in the manner and at the times herein set forth. Said sum is intended to include all increases in cost, current or unforeseen, including, without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by the Subcontractor. All loss or damage arising from any of the work performed under this Contract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by the Subcontractor. It is mutually agreed between the parties hereto that no payment made under this Contract, shall be conclusive evidence of the performance of this Contract, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

30. NO DELAY BY CONTRACTOR. Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of this Agreement, the performance of any work, the delivery of any material, the payment of any monies to Subcontractor, or otherwise, the Subcontractor agrees that it will not directly or indirectly stop or delay any work or part of work on its part required to be performed, or the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy, regardless of whether such controversy, dispute or question is subject to arbitration or litigation.

31. SAFETY.

(a) The Subcontractor shall, at its own cost and expense, protect its own employees, employees of Contractor and all other persons from risk of death, injury or bodily harm arising out of or in any way connected with the work to be performed hereunder, and Subcontractor shall strictly comply with all safety orders, rules, regulations or requirements of all federal, state and local government agencies exercising safety jurisdiction over said work including, but not limited to, the federal and state OSHA REGULATIONS and shall comply fully with all of Contractor's safety requirements, policies and rules. Subcontractor shall indemnify and save Contractor harmless from any liability, loss, cost, damage or expense, including attorneys' fees, which Contractor may suffer or incur as a result of any cause of action, proceeding, citation or work stoppage arising out of or in any way connected with the alleged violation by Subcontractor of any such safety order, rule, regulation or requirement, whether such violation is ultimately proved or not.

(b) If Subcontractor or its personnel do not comply with all safety requirements applicable to the Project, Contractor may, but shall not be obligated to, give written notice of violation to Subcontractor. If Subcontractor has not instituted performance to come into compliance with such safety requirements within twenty-four (24) hours, or the event compliance cannot be completed within twenty-four (24) hours, the immediate commencement and continued effort of such action as may be necessary to obtain compliance within a reasonable time from commencement after such written notice has been delivered to Subcontractor, without prejudice to any other remedy available to Contractor hereunder, payment on this Subcontract will be withheld until such time as compliance has been obtained to the safety requirement(s) which was the subject of the written notice of violation and satisfactory assurances, reasonably acceptable to Contractor, have been given by the Subcontractor to insure that the Subcontractor and its personnel engaged on the Project will comply with all safety requirements as stated herein.

32. REQUIREMENTS PRIOR TO COMMENCEMENT OF WORK. Subcontractor shall not proceed with any work nor receive payment under this Subcontract until, among other things, the Contractor has received a fully executed copy of this Subcontract Agreement together with appropriate insurance certificates and a Subcontract bond, if required.

33. ATTORNEY FEES. If either party becomes involved in litigation or arbitration arising out of this Subcontract or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit, shall award attorney fees to the prevailing party. Unless judgment goes by default, the attorney fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorney fees paid or incurred in good faith.

34. NOTICES. Any notices required or permitted under the Subcontract shall be in writing and shall be deemed duly served only if either hand delivered or given by certified mail, return receipt requested, addressed in the address contained in the Subcontract, but such address may be changed by written notice given by one party to the other from time to time. Notice in (b) shall be deemed received the date the return receipt is signed.

35. GENERAL.

(a) Section headings herein are inserted only for convenience or reference, and shall in no way define, limit or prescribe the scope or intent of any provisions of the Subcontract.

(b) All previous oral or written promises, agreements, and representations relating to the Subcontract are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed and understood that the terms and provisions of this Subcontract, into which the Subcontract Documents have been incorporated, shall constitute the full and complete agreement between Contractor and Subcontractor.

(c) If any term or provision of this Subcontract shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Subcontract shall be valid and shall be enforceable to the fullest extent permitted by law.

(d) All covenants, agreements, indemnities, guaranties and warranties made by the Subcontractor shall survive completion of the work [illegible] the Subcontract, and any payment of the Contract Price [illegible] in part.

(e) No waiver by Contractor, whether expressed or implied, of any provision of this Subcontract shall be deemed to be a waiver of any other provision of this Subcontract or of any subsequent breach by Subcontractor of the same provision or any other provision.

KOLL CONSTRUCTION SUBCONTRACT AGREEMENT
ADDENDUM A

21

This Addendum A to Koll Construction Subcontract Agreement is attached to and made a part of that certain Koll Construction Subcontract Agreement by and between TKCC, Inc., a California corporation d/b/a Koll Construction, referred to as Contractor, and ____________________, referred to as Subcontractor. All of the terms and conditions of the Subcontract Agreement are unmodified except for the following:

A. Paragraph 1 is revised to add Draper and Kramer Incorporated as an Additional Insured in the same manner and to the same extent as the Contractor and Owner.

B. In Paragraph 4, the third paragraph (requiring labor union agreements) shall apply only with respect to Operating Engineers.

C. In Paragraph 12(b), replace the word "demand" with the word "claim."

D. In Paragraph 14, identify the Additional Insureds as Owner, Contractor and Draper and Kramer Incorporated.

E. Delete the first sentence of Paragraph 21 and replace it with the following:

> Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee Form, will guarantee all materials, workmanship, design and/or engineering as it relates specifically to this project and agrees to replace at its sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, losses or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project.

F. In Paragraph 21(a), add the words "caulking and sealants" after the word "waterproofing" in the third line.

G. The heading in Paragraph 30 is deleted and replaced with the heading "No Delay by Subcontractor."

Except as set forth herein, all other terms and conditions of the Subcontract Agreement are unmodified.

TKCC, Inc., a California corporation d/b/a Koll Construction	Subcontractor:
By:____________________	By:____________________
Its:____________________	Its:____________________

EXHIBIT "D"

KOLL CONSTRUCTION

22

SUBCONTRACTOR'S INVOICE AND RELEASE

INVOICE NO. ______ AREA NO. ______ P.M. APP. ______ A.M. APP. ______ ACCT. APP. ______

COST MONTH ______ VENDOR NO. ______ JOB NO. ______ P.M. Date ______ A.M. Date ______ ACCT. Date ______

PW NPW ITEM NO. ______

ROUTE TO ______

SPECIAL INSTRUCTIONS ______

CHECK

Check Date	Check Number	Joint Payee	Retention	Net

Subcontractor's Name ______ Subcontractor's Invoice No: ______

Remittance Address ______ Phone No. ______

The following invoice covers work completed THROUGH CALENDAR MONTH ENDED (date) ______

Job Name ______ Koll Subcontract No. ______

Job Address ______

Contract Amt. Thru C.O.# ______ ______

______ % Complete To Date ______

Less: ______ % Retention ______(______)______

Total This Request ______

Less: Amount Previously Invoiced ______(______)______

Amount Due This Payment ______

SUBCONTRACTOR'S CONDITIONAL RELEASE

TO: THE OWNER OF THE REAL PROPERTY AND WORK OF IMPROVEMENT DESCRIBED ABOVE, ITS CONSTRUCTION LENDER AND TKCC, INC., A CALIFORNIA CORPORATION, DBA: KOLL CONSTRUCTION.

Upon receipt by the undersigned of a check from Koll Construction in the sum of $ ______ payable to the above-named Subcontractor, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release pro tanto any mechanic's lien, stop notice, equitable lien or labor and material bond rights the undersigned has on the above-referenced Project to the following extent. This release covers a progress payment which constitutes payment in full for labor, services, equipment or material furnished to the above-referenced Project up through and including the end of the above calendar month. This release does not cover any retention or items furnished after said date. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

This release is for the benefit of, and may be relied upon by, the owner, the prime contractor, the construction lender and the principal and surety on any labor and material bond. The undersigned does hereby represent and warrant that the undersigned has or will fully pay for all labor and materials, any and all welfare, pension, vacation or other contributions required to be made on account of the employment of such laborers or mechanics so provided by the undersigned and does hereby agree to indemnify and hold each of the foregoing, the Project, work of improvement and real property, free and harmless from any and all claims or liens through the date indicated herein.

The person signing this release on behalf of the undersigned firm warrants and represents to have the full legal authority to act for and bind the undersigned firm to the terms hereof.

DATED: ______ Firm Name ______
(Firm furnishing labor, etc.)

By: ______ Title ______
(Original Signature)

K-112 (CAL)
10/89

EXHIBIT -

Exhibit A
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DRAPER AND KRAMER
INCORPORATED

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Application for Payment
Page 2 of 2

TRADE PAYMENT BREAKDOWN

Project ______________________ Trade Code ______________________

Trade ______________________ Month of ______________________

Subcontractor ______________________

Item of Work	Value in Contract Amount of Approved Change Order	% Complete	Value of Work Complete
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
TOTAL			

Change Orders No.

1.
2.
3.
4.
5.

Note: 1. Itemize contract sum (which equals total) which nets identifiable work components on receipt of this from this column is to be completed and return to the General Contractor for approval.

This form will also be used in submitting monthly requisitions, which for base contract as well as change order work will be used by subcontractor as backup to his requisition.

2. Each month, subcontractor shall complete and total these columns. No other format will be acceptable.

EXHIBIT D Exhibit A

THE AMERICAN INSTITUTE OF ARCHITECTS

TRACK 2 EXHIBIT 181
DATE 11·8·05
WITNESS: Hussey Vol. I
24 PAGE(S)

1

AIA Document A201

General Conditions of the Contract for Construction

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION

1987 EDITION

TABLE OF ARTICLES

1. GENERAL PROVISIONS
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5. SUBCONTRACTORS
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12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

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Exhibit A
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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work is to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the

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Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2

OWNER

2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. *[Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.]*

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

.1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

.2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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.3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;

.4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

3.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the

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Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect.

4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to arbitration.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Con-

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tractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

4.3.3 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

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